(19,454.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 354.

GEORGE W. BEAVERS, APPELLANT,

vs.

CHARLES J. HAUBERT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF NEW YORK.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 27, 1904.

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1 United States District Court for the Eastern District of New York.

To the district court of the United States for the eastern district of New York:

The petition of George W. Beavers respectfully shows:

I. That your petitioner is a citizen of the United States and is imprisoned and restrained of his liberty in the custody of one, Charles J. Haubert, marshal of the United States within and for the eastern district of New York, in the borough of Brooklyn, city of New York, eastern district of New York, and within the space of twenty miles herefrom, and held under color of authority of the United States, as evidenced by a commitment, dated the twenty-ninth day of June, 1904 and signed by B. Lincoln Benedict, Esq., an United States commissioner in and for the eastern district of New York, a copy of said commitment being hereto annexed and marked Exhibit "I" and made part hereof, and a warrant to apprehend issued by the said B. Lincoln Benedict, Esq., dated the third day of June, 1904, and has been committed and is detained under and by virtue of the said warrant and commitment and not by virtue of any judgment, decree or final order of any court of the United States, a copy of such warrant being hereto annexed and marked Exhibit "II" and made part hereof.

II. That the cause or pretense of the imprisonment of your petitioner according to the best of his knowledge and belief is that a complaint on removal, verified the first day of June, 1904, was made under oath by one Frank E. Little, charging or purporting

2 to charge your petitioner with the commission of a crime against the United States in the District of Columbia, a copy of which complaint is hereto annexed and marked Exhibit "III" and made part hereof. That in said complaint the said Frank E. Little referred to a copy of a bench warrant issued by Hon. Harry M. Clabaugh, chief justtice of the supreme court of the District of Columbia, dated the 3rd day of November, 1903, a copy of which is hereto annexed and marked Exhibit "IV" and made part hereof, and a paper purporting to be an exemplified copy of an indictment alleged to have been found in the city of Washington, District of Columbia, by the grand jury thereof at the April term thereof, purporting to charge the petitioner George W. Beavers with the commission of a crime against the United States, a copy of which indictment is hereto annexed and marked Exhibit "V" and made part hereof. And that the cause or pretense of the imprisonment and restraint of your petitioner is that a charge has been made against him as set forth in all the said documents hereinbefore enumerated.

III. That your petitioner is restrained of his liberty without due

process of law. That the arrest under the process hereinbefore referred to is wholly void and without force or effect. That said restraint is illegal and in violation of the rights insured and guaranteed to him under the Constitution of the United States of America.

That the said marshal in and for the eastern district of New York had no authority to arrest your petitioner under the said warrant and the said United States commissioner had no jurisdiction to issue the same, and that the said commissioner had no jurisdiction to entertain any proceedings against your petitioner, to receive any evidence against him, to require bail of your said petitioner,
3 to hold him in default thereof or to commit him to await the order of the district judge.

IV. That your petitioner has duly objected to the proceedings before the said commissioner on the ground that the said commissioner is without jurisdiction in the premises, and that he has not given bail before the said commissioner and that he is in the actual custody of the United States marshal in and for the eastern district of New York, by virtue of the commitment hereinbefore referred to and hereto annexed.

V. That the illegality of the arrest and restraint of the liberty of your petitioner arises from the following facts:

That on the 16th day of July, 1903, two indictments were found against your petitioner by the grand jury of the United States in and for the eastern district of New York, charging him with a violation of sections 1781 and 1782 of the Revised Statutes of the United States respectively, and that on the 25th day of July, 1903, an indictment was found by the said grand jury against your petitioner, charging him with a violation of section 1781 of the Revised Statutes, copies of all of which said indictments are hereto annexed and marked Exhibits "VI," "VII" and "VIII" and made part hereof. That on the 3rd day of September, 1903, a bench warrant was issued thereon, and that removal proceedings were instituted against your petitioner in the southern district of New York under the indictment found on July 25th 1903 as aforesaid. That on November 10th, 1903, a warrant of removal was issued by the Hon. George C. Holt, a district judge of the United States in and for the southern district of New York, directing the removal of your petitioner
4 to the eastern district of New York, for the purpose of answering to the said indictments, a copy of which warrant of removal is hereto annexed, marked Exhibit "IX" and made part hereof. That on or about the 23rd day of May, 1904, an order was entered in the circuit court of the United States for the southern district of New York, directing the said George W. Beavers to surrender himself on or before the 25th day of May, 1904, into the custody of William Henkel, United States marshal for the southern district of New York, for the purpose of removal to the eastern district of New York under the warrant of removal issued on November 10th, 1903, by the Hon. George C. Holt, as aforesaid. That pursuant to said order the said George W. Beavers did on the 24th day of May, 1904, surren-

der himself into the custody of the said William Henkel, for the purposes aforesaid, and did on the 24th day of May, 1904, enter into a recognizance before the Hon. Geo. B. Adams, one of the judges of the district court of the United States for the southern district of New York in the penal sum of ten thousand dollars with one, James R. Brown, as surety thereon, for his appearance in the United States circuit court for the eastern district of New York at the next regular term thereof for the trial of bail cases, a copy of which recognizance is hereto annexed and marked Exhibit "X" and made part hereof. That on the 28th day of May, 1904, William J. Youngs, Esq., United States district attorney in and for the eastern district of New York, notified the petitioner and his surety to appear before the United States circuit court for the eastern district of New York on the first day of June, 1904, for the purpose of pleading to the said indictments, a copy of which notice is hereto annexed and marked Exhibit "XI" and made part hereof. That on the first day of June,
5 1904, your petitioner duly appeared before the United States circuit court for the eastern district of New York and his arraignment for the purpose of pleading to three indictments found against him by the grand jury for the eastern district of New York, as aforesaid, was duly moved by the said United States district attorney. That the court accorded your petitioner one week's time to move upon and plead to the said indictments. That on the 7th day of June, 1904, notice of motion to quash the said indictments and affidavits and exhibits relating thereto and notice of motion for bills of particulars in respect of each of the said indictments were served upon William J. Youngs, Esq., United States district attorney as aforesaid, returnable on the eighth day of June, 1904, That on the eighth day of June, 1904, your petitioner duly appeared before the said circuit court in accordance with the directions of Hon. Edward B. Thomas, district judge of the United States in and for the eastern district of New York, prepared to move upon and plead to the said indictments. That at that time the said district attorney refused to proceed further with the proceedings with reference to the said indictments but stated that it was his intention to institute proceedings for the removal of the accused to the District of Columbia under the complaint, warrant and other papers hereinbefore referred to. That thereupon the court adjourned all further proceedings until the 13th day of June, 1904, and from time to time thereafter till the date of this petition, and directed your petitioner to appear from time to time and enlarged him from day to day upon the recognizance before entered into and hereto annexed and marked Exhibit "X." That the petitioner was on the 8th day of June, 1904 arrested upon the warrant to
6 apprehend hereinbefore referred to by the said Charles J. Haubert, Esq., United States marshal in and for the eastern district of New York. That at the time of the said arrest of your petitioner and at all the times herein mentioned the said recognizance was and is subsisting and of full force and effect and

had and has not been cancelled or annulled. That the said indictments have not been quashed or nolle prossed, but still remain in full force and effect. That your petitioner has submitted motions in respect of the said indictments to the court for determination and if such motions are overruled, is ready to plead thereto.

VI. That as will more fully and at large appear from the copy of the minutes of the proceedings had before said commissioner, hereto annexed and marked Exhibit "XII" and made part hereof, the only evidence adduced by the Government was a certified copy of the indictment before referred to and marked Exhibit "V" and proof of the identity of the accused. That the said indictment constituted no proof or evidence and was incompetent and inadmissible as evidence, because it failed to state facts sufficient to constitute a crime and because it was offered in evidence in the presence of several of the witnesses on whose testimony it was found, and who were called before the said commissioner and gave evidence before the commissioner in respect of the matters therein alleged. And because it affirmatively appeared from the testimony of said witnesses that there was no probable cause to believe that the defendant was guilty of an offense against the United States. That whatever probative force the said indictment possessed was totally rebutted and destroyed by the primary evidence adduced before the said commissioner on the part of the said petitioner. That the commitment by the said commissioner hereto annexed and marked
7 Exhibit "I" is illegal and void upon its face and fails to charge the defendant with the commission of a crime.

VII. That as your petitioner is informed by counsel and verily believes, he has a right to remain in the eastern district of New York until criminal justice therein is satisfied and until he is tried upon the said indictments, or they are quashed or otherwise disposed of. That his arrest and commitment for purposes of removal to the District of Columbia while he is still in custody, for the purpose of trial in the eastern district of New York, is in violation of his constitutional right not to be restrained of his liberty without due process of law and of the other rights guaranteed him under the Constitution of the United States, and that the said commissioner has no jurisdiction or authority to apprehend, arraign or commit your petitioner while he is still in the custody of the United States for the purpose of pleading to the indictments found in the eastern district of New York, as evidenced by the recognizance hereinbefore referred to and hereto annexed. That as your petitioner is informed by counsel and verily believes no warrant should issue for his commitment for the purpose of removal upon an indictment so fatally defective as to matters of substance, as to be utterly insufficient to sustain a judgment of conviction after the interposition of a demurrer, and that your petitioner is also informed and verily believes that the probative force of the said indictment was utterly overcome and destroyed by the witnesses' testimony adduced on his behalf so that no finding of probable cause could properly be made thereon.

Wherefore your petitioner prays that a writ of *habeas corpus* issue forthwith, directed to the person having your petitioner in
8 custody, commanding him to bring the body of your petitioner before this court forthwith, for such action thereon as may be proper in the premises and further, that a writ of certiorari issue, directed to the Hon. B. Lincoln Benedict, United States commissioner as aforesaid in aid thereof, commanding that he return all proceedings against your petitioner to this court forthwith for such action as may be proper in the premises.

GEORGE W. BEAVERS, *Petitioner.*

MORGAN & SEABURY,
Attorneys for Petitioner.

Office & P. O. address: 290 Broadway, borough of Manhattan, New York city.

UNITED STATES OF AMERICA,
Eastern District of New York, County of Kings, } *ss:*

George W. Beavers being duly sworn, deposes and says, that he has read the foregoing petition and knows the contents thereof, and that the same is true in all respects.

GEORGE W. BEAVERS.

Subscribed and sworn to before me this 30th day of June, 1904.

[SEAL.] PERCY B. GILKES,
Notary Public, Kings Co., N. Y.

9 EXHIBIT I.

Before B. L. Benedict, United States Commissioner for the Eastern District of New York.

THE UNITED STATES OF AMERICA
vs.
GEORGE W. BEAVERS.

The President of the United States to Charles J. Haubert, the marshal of the United States for the eastern district of New York, and to his deputies or any of them, Greeting:

Whereas, the above named defendant George W. Beavers, has been arrested and brought before me this day upon a warrant of arrest, charged upon oath with having committed an offence against the laws of the United States, in this viz.: That at Washington in the District of Columbia *in said eastern district of New York*, on the 11th day of July, 1901, he being then and there an officer of the

United States and an agent thereof in the employ of the Post Office Department did unlawfully receive and accept from, one W. Scott Towers, a valuable consideration, that is to say, a draft on the Fourth National Bank of New York City for the sum of $350.00 with the intent that the decision and action of said Beavers should be influenced in a matter then pending or to be brought before him in his official capacity for consideration as by complaint on file in my office may more fully and at large appear and it appearing to me that there is probable cause to believe that the offence with which the defendant is so charged has been committed, and the said defendant not having given sufficient bail as required by me, the said U. S. commissioner, in the sum of ten thousand dollars, to appear for trial in the said District of Columbia.

10 Now therefore, your are hereby commanded in the name and by the authority of the United States of America, to take the said defendant into your custody and him safely keep, until he shall be ordered by the district judge to be removed to the District of Columbia for trial or shall be discharged according to law.

Witness my hand and seal this 29th day of June, 1904.

(Signed) B. LINCOLN BENEDICT,
U. S. Commissioner.

11 EXHIBIT II.

The President of the United States of America to the marshal of the United States for the eastern district of New York, and to his deputies or any or either of them:

Whereas, complaint on oath has been made to me, charging that George W. Beavers, at Washington in the District of Columbia on the 11th day of July in the year one thousand nine hundred and one being then and there an officer and agent of the Government in the employ of and under the Post Office Department of the United States did knowingly and unlawfully receive and accept an obligation for the payment of money from one W. Scott Towers who was then and there an agent of the Elliott and Hatch Book-typewriter Company, that is to say, a draft on the Fourth National Bank of New York City for the sum of $350.00 payable to the order of said Towers and by the said Towers endorsed for payment, with intent that the action or decision of said Beavers in a matter then pending or to be brought before him for consideration in his official capacity should be influenced thereby as by copy of complaint hereto annexed may more fully appear, and contrary to the statutes of the United States in such behalf made and provided.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said George W. Beavers wherever he may be found, and bring his body forthwith before me, or some judge or justice of the United States,

or other United States commissioner, that he may then and there be dealt with, for said offence, according to law.

Given under my hand and seal, this 3rd day of June in the year of our Lord one thousand nine hundred and four.

[L. S.] B. LINCOLN BENEDICT,
United States Commissioner for the Eastern District of New York.

12 Exhibit III, copy of the complaint of Frank E. Little, is omitted, it being the same as the complaint annexed to the return of the commissioner to the writ of certiorari.

13 EXHIBIT IV.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

THE UNITED STATES *vs.* GEORGE W. BEAVERS. } Criminal Number 23954. Indicted for Violation of the Section 5501, R. S. U. S.

The President of the United States to the United States marshal for the District of Columbia, Greeting:

You are hereby commanded to take the defendant George W. Beavers, if he is found in your district, and him to have before the criminal court for the said District of Columbia (immediately) to answer the United States touching the offence charged against him.

Hereof fail not, and have there then this writ, so endorsed as to show how you have executed it.

Witness, the Honorable Harry M. Clabaugh, chief justice of said court, the 3rd day of November, 1903.

J. R. YOUNG, *Clerk*,
[SEAL.] By A. W. SMITH,
Assistant Clerk.

14 The warrant is endorsed as follows:

Criminal court No. 1. Criminal number 23954. United States against George W. Beavers. Bench warrant. Issued November 3rd, 1903. Marshal's return —— —— U. S. marshal.

15 EXHIBIT V.

The Supreme Court of the District of Columbia, Holding a Criminal Court, in the April Term of the Year of Our Lord One Thousand Nine Hundred and Three.

THE DISTRICT OF COLUMBIA, *S. C. T.:*

The grand jurors for the United States of America inquiring for the District of Columbia upon their oath present, that on the sixth day of

October, in the year of our Lord one thousand nine hundred, and from thence until the first day of June, in the year of our Lord one thousand nine hundred and one, George W. Beavers, late of the city of Washington, in the said District of Columbia, at Washington aforesaid, in the said District, was an officer of the said United States and a person acting for and on behalf of the said United States in an official capacity under and by virtue of authority of the department of the Government thereof, that is to say, superintendent of salaries and allowances, in the office of the First Assistant Post Master General of the said United States, of the Post Office Department of the Government thereof, and during the period aforesaid did act as and perform the duties of said superintendent of salaries and allowances; that on the said first day of July, in the year of our Lord one thousand nine hundred and one, and from thence until and on the 24th day of March, in the year of our Lord one thousand nine hundred and three, the said George W. Beavers was an officer of the said United States and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of a department of the Government thereof, that is to say, general superintendent of salaries and
16 allowances, in the office of the said First Assistant Post Master General of the said United States, in the Post Office Department of the Government thereof, and during the last mentioned period did act as, and perform the duties of, said general superintendent; that by reason of his being such officer and person acting as aforesaid, under the law and regulations thereof, then pursuant to law prescribed and promulgated by the Post Master General of the said United States for the government of his department and the conduct of its officers and clerks and in force during the said period, he the said George W. Beavers was charged, amongst other things, with the consideration of orders and allowances for miscellaneous and incidental items and supplies, including furniture, and book-typewriting machines, called book-typewriters, for use in post offices throughout the said United States involving outlays and increase and expenditure of the monies of the said United States appropriated by law for the service of the said Post Office Department for the fiscal years ending June thirtieth, one thousand nine hundred and one, June thirtieth one thousand nine hundred and two and June thirtieth one thousand nine hundred and three, and also with procuring, in accordance with the methods provided by the said regulations and by-law, from persons and corporations proposing to furnish the same, such supplies, furniture and book-typewriters for the use aforesaid, by open purchase or contract at the places and in the manner in which said supplies, furniture and book-typewriters were and are usually bought and sold between individuals, in case the public exigency did not require such purchases and contracts to be made by advertisement for proposals respecting the same,—in the prescribing and promulgating of which said regulations he, the said

George W. Beavers, during the periods aforesaid, then had notice;
and that during the said periods, and by reason of his being
17 an*f* acting as such superintendent and general superintendent,
it became and was the duty of the said George W. Beavers, when discharging the duties with which he was so charged as aforesaid, carefully to guard the interests of the said United States, to observe the laws thereof, and the regulations aforesaid, and to preserve those interests in considering and making allowances for and procuring such miscellaneous and incidental items and supplies and furniture as aforesaid, and by all reasonable mean*d* and in the manner provided by law and the regulations aforesaid to secure terms as favorable to the said United States as possible when making contracts with and securing from persons and corporations proposing to furnish such supplies, furniture and book-typewriters for the said Post Office Department and for the use aforesaid, involving expenditures when the monies appropriated as aforesaid, and by all reasonable and lawful means to obtain by purchase or contr*contr*act such supplies and furniture, for that department, out of the same monies, as cheaply as possible; and that because, as the grand jurors aforesaid, upon their oath aforesaid, charging the fact to be, special trust and confidence were reposed in him by his superior officers the said Post Master General and First Assistant Post Master General, and by the persons for the time being acting as such superior officers, by reason of his being such officer and person as aforesaid, it then and there also became and was the duty of the said George W. Beavers, under the law and the said regulations, faithfully and truthfully to advise his said superior officers, *are* the person acting as such, of and concerning all the matters requiring their supervision and notice and pertaining to the discharging of his the said George W. Beavers' said duties, and to inform them truly and in good faith concerning all allowances, contracts, undertakings, orders and purchases considered by him in the discharge
of his said duties, and concerning all bills or acts rendered
18 against the said United States and the said Post Office Department in connection with such allowances, contracts, undertakings, orders and purchases, and especially in connection with allowances, contracts, undertakings, orders and bills or acts made, entered into and rendered in connection with the purchase of certain furniture and book-typewriters hereinafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that one W. Scott Towers, late of Washington aforesaid, during the periods aforesaid, was an agent of the Elliott & Hatch Book-typewriter Company, a corporation theretofore organized under the laws of the State of New York, and then existing under that name, and engaged in the business of manufacturing and selling certain book-typewriting machines, called book-typewriters, and at divers times during the said first mentioned period, under the circumstances hereinafter set forth, did, as such agent of the said corporation, sell and furnish a large

number, to wit, fourteen, of such book-typewriters to the said Post Office Department, at the price of two hundred dollars each, that is to say, one book-typewriter each for the post office of the said United States at Columbia, South Carolina; East Liverpool, Ohio; Charleston, South Carolina; Helena, Montana; Rochester, New York; Kingston, New York; and seven book-typewriters for the post office of the said United States at Boston, Massachusetts;—which said book-typewriters were so sold and furnished to the said Post Office Department on divers days during the said first mentioned period.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said first mentioned period, to wit, on the said sixth day of October in the year of our Lord nineteen hundred the said George W. Beavers and W. Scott Towers did
19 enter into an unlawful and corrupt agreement whereby the said W. Scott Towers, agent of the said corporation as aforesaid, undertook and promised on behalf of the said corporation to pay to him the said George W. Beavers, for the own personal use and benefit of him the said George W. Beavers, from time to time as the said corporation itself received payment therefor, and while he continued to be such officer and person acting in an official capacity under and by virtue of the authority of the said Post Office Department as aforesaid, the sum of twenty-five dollars out of each sum of two hundred dollars paid to the said corporation, out of the monies appropriated as aforesaid, for purchasing the said book-typewriters for the said Post Office Department; and that the said George W. Beavers afterwards, to wit, on the eleventh day of July in the year of our Lord nineteen hundred and one, during the last mentioned period, while he the said George W. Beavers was still an officer of the said United States as aforesaid, and a person acting for and on behalf of the said United States in an official capacity as aforesaid, and in pursuance of the said unlawful and corrupt agreement, at Washington, aforesaid, in the said District of Columbia, unlawfully did receive from the said W. Scott Towers, agent of the said corporation, as aforesaid, a certain obligation for the payment of money, to wit, a draft dated that day numbered 139946, drawn by the Citizens' National Bank of Washington City, in the said District of Columbia, upon the Fourth National Bank of New York City, New York, for the payment of the sum of three hundred and fifty dollars to the order of the said W. Scott Towers, and by the said W. Scott Towers endorsed in blank, and this with intent on the part of him the said George W. Beavers, to have his decision and action on a matter then pending and thereafter to be brought before him in his official capacity and in his place of trust influenced thereby to the detriment of the said United States, that is to say, to have his decision and action in the
20 matter of then and thereafter making allowance for and procuring for the said Post Office Department, in the manner aforesaid, from the said corporation, book-typewriters of the kind aforesaid, otherwise than in the manner in which such articles are usually

bought and sold between individuals, and not as cheaply as possible, at a price greater in excess of the price at which the same articles could and would have been procured for the said Post Office Department if he the said George W. Beavers had honestly discharged his said duties and not entered into and executed the said unlawful and corrupt agreement with the said W. Scott Towers as aforesaid, that is to say, twenty-five dollars in excess upon each of the said book-typewriters,—and with intent on the part of him the said George W. Beavers to have his action in the matter of faithfully and truthfully advising his said superior officers, or the persons acting as such, of and concerning the discharge of his said duties, influenced thereby adversely to his true duty and to the interest of the said United States, in such a manner as to cause him to connive at and allow the fraud on the said United States involved in the said unlawful and corrupt agreement; against the peace and dignity of the said United States and contrary to the form of the statute of the said United States in such case made and provided.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers, on the 11th day of July, in the year of our Lord nineteen hundred and one, at Washington aforesaid, in the District of Columbia, so being general superintendent of salaries and allowances and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of the Post Office Department of the Government thereof, as in the first count of this
21 indictment set forth, and same having entered into the unlawful and corrupt agreement in this count mentioned, further in pursuance of the said unlawful and corrupt agreement, with the said several intents on his part set forth in the first count, and under the circumstance- and condition- therein mentioned unlawfully did receive from the said W. Scott Towers, agent of the corporation in the said first count mentioned, a certain contract, promise and gratuity, for the payment of money, that is to say, a draft for three hundred and fifty dollars, of the value of three hundred and fifty dollars, in the said first count of this indictment described, against the peace and dignity of the said United States, and contrary to the form of the statute in the same case made and provided.

3. And the said grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers on the said eleventh day of July, in the year of our Lord, nineteen hundred and one, at Washington aforesaid, in the said District of Columbia, so being general superintendent of salaries and allowances and a person acting for and on behalf of the said United States, in an official capacity under and by virtue of the authority of the Post Office Department of the Government thereof as in the first count of this indictment set forth, and so having entered into the unlawful and corrupt agreement in that count mentioned, further in pursuance of the said unlawful and corrupt agreement, with the said several intents on his part set forth in the said first count

and under the circumstances and conditions therein mentioned, unlawfully did accept and receive from the said W. Scott Towers, agent of the corporation in the said first count mentioned, certain money, that is to say, the draft for three hundred and fifty dollars, of the value of three hundred and fifty dollars, in the said first count of this indictment described; against the peace and
22 dignity of the said United States, and contrary to the form of the same in such case made and provided.

(Signed) MORGAN H. BEACH,
United States Attorney.

23 Indorsements on indictment: Filed in open court, October 5th, 1903 J. R. Young, clerk. No. 22954 United States *vs.* George W. Beavers Violation of section 5501 R. S. U. S. Witnesses: H. J. Gensler, A. T. Brice, George D. Ashton, E. L. McKee, M. D. Helm, E. H. Schley, Charles Flynn, Howard M. Jacobs, Mrs. H. J. Gensler, Jr. A true bill. A. M. McLachlen, foreman.

24 EXHIBIT VI.

Circuit Court of the United States of America for the Eastern District of New York.

At a stated term of the circuit court of the United States of America, for the eastern district of New York, begun and held in the borough of Brooklyn, city of New York, within and for the district aforesaid, on the thirteenth day of July, in the year of our Lord one thousand nine hundred and three, and continued by adjournment to and including the sixteenth day of July, in the year of our Lord one thousand nine hundred and three.

EASTERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America, within and for the district aforesaid, on their oaths present that George W. Beavers, late of the borough of Brooklyn in the county of Kings and eastern district of New York, was on the fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and on all the divers other days and times between that day and the fourth day of March, in the year of our Lord one thousand nine hundred and one, an officer of the Government of the United States, that is to say, chief of the salary and allowance division of the Post Office Department of the Government of the United States, and during all of said days and times was actively engaged in the performance of his duties as such officer of the said Government; and that the Edward J. Brandt-Dent Company was on said fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and on all the other days and times between that day and the fourth

day of March, in the year of our Lord one thousand nine hundred and one, a corporation duly organized under the laws of the State of Wisconsin and doing business in the United States of America; and that on the nineteenth day of May, in the year of our Lord one thousand eight hundred and ninety-nine, an agreement was made by and between the said Edward J. Brandt-Dent Company and the United
25 States of America and a department thereof, viz., the Post Office Department of the Government of the said United States of America, for the making and delivery to the said Post Office Department of the United States, of two hundred and fifty (250) Brandt automatic cashiers to be made and which were thereafter made by the said Edward J. Brandt-Dent Company for the Government of the United States and said department thereof, to wit, the Post Office Department of the United States, and to be thereafter and which were thereafter delivered by the said company to the United States and the said department thereof, at and for the price of one hundred and fifty dollars ($150) each and which were purchased and paid for by the United States; and that the said contract was and had been theretofore procured from the United States Government and the said department thereof, viz., the Post Office Department of the said United States Government, by and through the assistance and with the aid of said George W. Beavers, he being then and there such officer of the said Government as aforesaid, the giving of the said contract by the said Government having been recommended by the said George W. Beavers as such officer as aforesaid, to the First Assistant Postmaster General of the United States, and having been allowed and made on behalf of the said United States and the said department thereof by the said First Assistant Postmaster General of the said United States, because of and on the said recommendation of the said George W. Beavers, being then and there such officer as aforesaid, and that one Edmund H. Driggs was on the fifth day of March in the year of our Lord one thousand eight hundred and ninety-nine, and on all the other divers days and times between that day and the fourth day of March in the year of our Lord one thousand nine hundred and one, a member of Congress of the United States duly elected and qualified, to wit, a representative in the House of Representatives in said Congress, duly elected from the third congressional district of the State of New York,
26 and during all of said days and times was actively engaged in the performance of his duties as such member of Congress; and that on all the days and times between said fifth day of March in the year of our Lord one thousand eight hundred and ninety-nine and the said fourth day of March in the year of our Lord one thousand nine hundred and one, one George F. Miller was acting and did act individually and as representative of the Edward J. Brandt-Dent Company for the sale of said automatic cashiers to the United States Government, and represented the said Edward J. Brandt-Dent Company in the making of the agreement and contract for the purchase of said two hundred and fifty (250) machines by

the said United States Government and the said department thereof; and that the said George F. Miller and the said Edmund H. Driggs represented the said Edward J. Brandt-Dent Company in the negotiations and agreements and transactions hereinabove set forth with the said Government of the United States and the said department thereof, and with the said George W. Beavers, being then and there such officer of the said Government as aforesaid; and that the said George W. Beavers, being then and there such officer of the said Government as aforesaid, did, on the seventeenth day of July in the year of our Lord one thousand nine hundred, in the borough of Brooklyn in the county of Kings and in the eastern district of New York, and within the jurisdiction of this court, knowingly, willfully and unlawfully receive and take money, property and other valuable consideration, to wit, the sum of eight hundred and forty dollars ($840), and of the value and amount of eight hundred and forty dollars ($840) estimated in lawful money of the United States, by knowingly, wilfully and unlawfully receiving a certain check and order for the payment of money from the said Edmund H. Driggs, he being then and there such Congressman as aforesaid, which said check
27 was made by the said Edmund H. Driggs and was payable then and there to the order of the said George W. Beavers, and was drawn on the First National Bank of the City of Brooklyn, and which said check was duly endorsed and deposited on the said seventeenth day of July in the year of our Lord one thousand nine hundred, by the said George W. Beavers to his account in the Nassau Trust Company in said borough of Brooklyn, and which said check was duly paid and the proceeds knowingly, wilfully, and unlawfully received by the said George W. Beavers, he being then and there such officer of said Government as aforesaid, and which said check was paid to the said George W. Beavers in payment of and in part payment for, and was on account of and as a part of the consideration for procuring and aiding to procure said certain contract from the Government of the United States and said department thereof, to wit, the Post Office Department of the United States, for the said Edward J. Brandt-Dent Company, and which said contract was for the making and delivery of two hundred and fifty (250) automatic cashiers made by the said Edward J. Brandt-Dent Company for the Government of the United States and the said department thereof, to wit, the Post Office Department of the United States, and delivered by the said company to the said United States and the said department thereof, and purchased and paid for by the said United States; which said contract had been and was theretofore procured from the Government of the United States and the said department thereof, for the said Edward J. Brandt-Dent Company, in the manner aforesaid by him, the said George W. Beavers, he, the said George W. Beavers, being then and there such officer of said Government aforesaid, against the peace and dignity of the United States of America, and contrary to the form of the statutes of the said United States, in such case made and provided.

28 *Second Count.*

And the jurors aforesaid on their oaths do further present that George W. Beavers, late of the borough of Brooklyn in the county of Kings and eastern district of New York, was on the fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and on all the divers other days and times between that day and the fourth day of March, in the year of our Lord one thousand nine hundred and one, an officer of the Government of the United States, that is to say, chief of the salary and allowance division of the Post Office Department of the Government of the United States, and during all of said days and times was actively engaged in the performance of his duties as such officer of the said Government; and that the Edward J. Brandt-Dent Company was on said fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and on all the other days and times between that day and the fourth day of March, in the year of our Lord one thousand nine hundred and one, a corporation duly organized under the laws of the State of Wisconsin and doing business in the United States of America; and that on the nineteenth day of May, in the year of our Lord one thousand eight hundred and ninety-nine, an agreement was made by and between the said Edward J. Brant-Dent Company and the United States of America and a department thereof, viz., the Post Office Department of the Government of the said United States of America, for the making and delivery to the said Post Office Department of the United States, of two hundred and fifty (250) Brandt automatic cashiers to be made and which were thereafter made by the said Edward J. Brandt-Dent Company for the Government of the United States and said department thereof, to-wit, the Post Office Department of the United States,
29 and to be thereafter and which were thereafter delivered by the said company to the United States and the said department thereof, at and for the price of one hundred and fifty dollars ($150.) each and which were purchased and paid for by the United States; and that the said contract was and had been theretofore procured from the United States Government and the said department thereof, viz., the Post Office Department of the said United States Government, by and through the assistance and with the aid of said George W. Beavers, he being then and there such officer of the said Government as aforesaid, the giving of the said contract by the said Government having been recommended by the said George W. Beavers as such officer as aforesaid, to the First Assistant Postmaster General of the United States, and having been allowed and made on behalf of the said United States and the said department thereof by the said First Assistant Postmaster General of the said United States, because of and on the said recommendation of the said George W. Beavers, being then and there such officer as aforesaid; and that one Edmund H. Driggs was on the fifth day of March in the year

of our Lord one thousand eight hundred and ninety-nine, and on all the other divers days and times between that day and the fourth day of March in the year of our Lord one thousand nine hundred and one, a member of Congress of the United States duly elected and qualified, to wit, a representative in the House of Representatives in said Congress, duly elected from the third congressional district of the State of New York, and during all of said days and times was actively engaged in the performance of his duties as such member of Congress; and that on all the days and times between said fifth day of March in the year of our Lord one thousand eight hundred and ninety-nine and the said fourth day of March in the year of our Lord one thousand nine hundred and one, one George F. Miller was acting and did act individually and as representa-
30 tive of the Edward J. Brandt-Dent Company for the sale of said automatic cashiers to the United States Government, and represented the said Edward J. Brandt-Dent Company in the making of the agreement and contract for the purchase of said two hundred and fifty (250) machines by the said United States Government and the said department thereof; and that the said George F. Miller and the said Edmund H. Driggs represented the said Edward J. Brandt-Dent Company in the negotiations and agreements and transactions hereinabove set forth, with the said Government of the United States and the said department thereof, and with the said George W. Beavers, he being then and there such officer of the said Government as aforesaid; and that the said George W. Beavers being then and there such officer of the said Government as aforesaid, did, on a certain day between the nineteenth day of July in the year of our Lord one thousand nine hundred, and the twenty-fifth day of July in the year of our Lord nineteen hundred, the precise date of which is unknown to said jurors and therefore cannot more definitely be stated, in the borough of Brooklyn in the county of Kings, and in the eastern district of New York, and within the jurisdiction of this court, knowingly, wilfully and unlawfully receive and take money, property and other valuable consideration, to wit, the sum of eight hundred and ten dollars ($810), and of the value and amount of eight hundred and ten dollars ($810) estimated in lawful money of the United States, by knowingly, wilfully and unlawfully receiving a certain check and order for the payment of money from the said Edmund H. Driggs, he being then and there such Congressman as aforesaid, which said check was made by the said Edmund H. Driggs and was payable then and there to the order of the said George W. Beavers, and was drawn on the First National Bank of the City of Brooklyn, and which said check was duly endorsed and
31 deposited on the said twenty-fifth day of July in the year of our Lord one thousand nine hundred, by the said George W. Beavers to his account in the Nassau Trust Company in said borough of Brooklyn, and which said check was duly paid and the proceeds knowingly, wilfully and unlawfully received by the said George W. Beavers, he being then and there such officer of said

Government as aforesaid, and which said check was paid to the said George W. Beavers in payment of and in part payment for, and was on account of and as a part of the consideration for procuring and aiding to procure said certain contract from the Government of the United States and said department thereof, to wit, the Post Office Department of the United States, for the said Edward J. Brandt-Dent Company, and which said contract was for the making and delivery of two hundred and fifty (250) automatic cashiers made by the said Edward J. Brandt-Dent Company for the Government of the United States and the said department thereof, to wit, the Post Office Department of the United States, and delivered by the said company to the said United States and the said department thereof, and purchased and paid for by the said United States; which said contract had been and was theretofore procured from the Government of the United States and the said department thereof, for the said Edward J. Brandt-Dent Company, in the manner aforesaid, by him, the said George W. Beavers, he, the said George W. Beavers being then and there such officer of said Government aforesaid, against the peace and dignity of the United States of America, and contrary to the form of the statutes of the said United States, in such case made and provided.

32 *Third Count.*

And the jurors aforesaid on their oaths do further present that George W. Beavers, late of the borough of Brooklyn in the county of Kings and eastern district of New York, was on the fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and on all the divers other days and times between that day and the fourth day of March, in the year of our Lord one thousand nine hundred and one, an officer of the Government of the United States, that is to say, chief of the salary and allowance division of the Post Office Department of the Government of the United States, and during all of said days and times was actively engaged in the performance of his duties as such officer of the said Government; and that the Edward J. Brandt-Dent Company was on said fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and on all the other days and times between that day and the fourth day of March, in the year of our Lord one thousand nine hundred and one, a corporation duly organized under the laws of the State of Wisconsin and doing business in the United States of America; and that on the nineteenth day of May, in the year of our Lord one thousand eight hundred and ninety-nine, an agreement was made by and between the said Edward J. Brandt-Dent Company and the United States of America and a department thereof, viz., the Post Office Department of the Government of the said United States of America, for the making and delivery to the said Post Office Department of the United States, of two hundred and fifty (250) Brandt automatic cashiers to be made and

which were thereafter made by the said Edward J. Brandt-
33 Dent Company for the Government of the United States and said department thereof, to wit, the Post Office Department of the United States, and to be thereafter and which were thereafter delivered by the said company to the United States and the said department thereof, at and for the price of one hundred and fifty dollars ($150) each, and which were purchased and paid for by the United States; and that the said contract was and had been theretofore procured from the United States Government and the said department thereof, viz., the Post Office Department of the said United States Government, by and through the assistance and with the aid of said George W. Beavers, he being then and there such officer of the said Government as aforesaid, the giving of the said contract by the said Government having been recommended by the said George W. Beavers as such officer aforesaid, to the First Assistant Postmaster General of the United States, and having been allowed and made on behalf of the United States and the said department thereof by the said First Assistant Postmaster General of the said United States, because of and on the said recommendation of the said George W. Beavers, being then and there such officer as aforesaid; and that one Edmund H. Driggs was on the fifth day of March in the year of our Lord one thousand eight hundred and ninety-nine, and on all the other divers days and times between that day and the fourth day of March in the year of our Lord one thousand nine hundred and one, a member of Congress of the United States duly elected and qualified, to wit, a Representative in the House of Representatives in said Congress, duly elected from the third congressional district of the State of New York, and during all of said days and times was actively engaged in the performance of his duties as such member of Congress; and that on all the days and times between said fifth day of March in the year
34 of our Lord one thousand eight hundred and ninety-nine and the said fourth day of March in the year of our Lord one thousand nine hundred and one, one George F. Miller was acting and did act individually and as representative of the Edward J. Brandt-Dent Company for the sale of said automatic cashiers to the United States Government, and represented the said Edward J. Brandt-Dent Company in the making of the agreement and contract for the purchase of said two hundred and fifty (250) machines by the said United States Government and the said department thereof; and that the said George F. Miller and the said Edmund H. Driggs represented the said Edward J. Brandt-Dent Company in the negotiations and agreements and transactions hereinabove set forth with the said Government of the United States and the said department thereof, and with the said George W. Beavers, he being then and there such officer of the said Government as aforesaid; and that the said George W. Beavers, being then and there such officer of the said Government as aforesaid, did, on a certain day between the fifth day of November in the year of our Lord one thousand nine hundred,

and the twenty-eighth day of November in the year of our Lord one thousand nine hundred, the precise date of which is unknown to said jurors and therefore cannot more definitely be stated, in the borough of Brooklyn in the county of Kings and in the eastern district of New York, and within the jurisdiction of this court, knowingly, wilfully and unlawfully receive and take money, property and other valuable consideration, to wit, the sum of two hundred and fifty dollars ($250), and of the value and amount of two hundred and fifty dollars ($250) estimated in lawfuly money of the United States, by knowingly, wilfully and unlawfully receiving a certain check and order for the payment of money from the said Edmund H. Driggs, he being then and there such Congressman as aforesaid, which said check
was made by the said Edmund H. Driggs and was payable then
35 and there to the order of the said George W. Beavers, and was drawn on the First National Bank of the City of Brooklyn, and which said ch-ck was duly endorsed and deposited on the said twenty-eighth day of November in the year of our Lord one thousand nine hundred, by the said George W. Beavers to his account in the Nassau Trust Company in said borough of Brooklyn, and which said check was duly paid and the proceeds knowingly, wilfully and unlawfully received by the said George W. Beavers, he being then and there such officer of said Government as aforesaid, and which said check was paid to the said George W. Beavers in payment of, and in part payment for, and was on account of and as a part of the consideration for procuring and aiding to procure said certain contract from the Government of the United States and said department thereof, to wit, the Post Office Department of the United States, for the said Edward J. Brandt-Dent Company, and which said contract was for the making and delivery of two hundred and fifty (250) automatic cashiers made by the said Edward J. Brandt-Dent Company for the Government of the United States and the said department thereof, to wit, the Post Office Department of the United States, and delivered by the said company to the said United States and the said department thereof, and purchased and paid for by the said United States; which said contract had been and was theretofore procured from the Government of the United States and the said department thereof, for the said Edward J. Brandt-Dent Company, in the manner aforesaid, by him, the said George W. Beavers, he, the said George W. Beavers being then and there such officer of said Government aforesaid, against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States in such case made and provided.

36 *Fourth Count.*

And the jurors aforesaid on their oaths as aforesaid, do further present that George W. Beavers, late of the borough of Brooklyn in the county of Kings and eastern district of New York, was on the fifth day of March, in the year of our Lord one thousand eight hun-

dred and ninety-nine, and on all the divers other days and times between that day and the fourth of March, in the year of our Lord one thousand nine hundred and one, an officer of the Government of the United States, that is to say, chief of the salary and allowance division of the Post Office Department of the Government of the United States, and during all of said days and times was actively engaged in the performance of his duties as such officer of the said Government; and that the Edward J. Brandt-Dent Company was on said fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and on all the other days and times between that day and the fourth day of March, in the year of our Lord one thousand nine hundred and one, a corporation duly organized under the laws of the State of Wisconsin, and doing business in the United States of America; and that on the nineteenth day of May, in the year of our Lord one thousand eight hundred and ninety-nine, an agreement was made by and between the said Edward J. Brandt-Dent Company and the United States of American and a department thereof, viz., the Post Office Department of the Government of the said United States of America, for the making and delivery to the said Post Office Department of the United States, of two hundred and fifty (250) Brandt automatic cashiers to be made and which were thereafter made by the said Edward J.
37 Brandt-Dent Company for the Government of the United States and said department thereof, to wit, the Post Office Department of the United States, and to be thereafter and which were thereafter delivered by the said company to the United States and the said department thereof, at and for the price of one hundred and fifty dollars ($150) each, and which were purchased and paid for by the United States; and that the said contract was and had been theretofore procured from the United States Government and the said department thereof, viz., the Post Office Department of the said United States Government, by and through the assistance and with the aid of said George W. Beavers, he being then and there such officer of the said Government as aforesaid, the giving of the said contract by the said Government having been recommended by the said George W. Beavers as such officer as aforesaid, to the First Assistant Postmaster General of the United States, and having been allowed and made on behalf of the said United States and the said department thereof by the said First Assistant Postmaster General of the said United States, because of and on the said recommendation of the said George W. Beavers, being then and there such officer as aforesaid, and that one Edmund H. Driggs was on the fifth day of March in the year of our Lord one thousand eight hundred and ninety-nine, and on all the other divers days and times between that day and the fourth day of March in the year of our Lord one thousand nine hundred and one, a member of Congress of the United States duly elected and qualified, to wit, a Representative in the House of Representatives in said Congress, duly elected from the third congressional district of the State of New York, and during

all of said days and times was actively engaged in the per-
38 formance of his duties as such member of Congress; and that on all the days and times between said fifth day of March in the year of our Lord one thousand eight hundred and ninety-nine and the said fourth day of March in the year of our Lord one thousand nine hundred and one, one George F. Miller was acting and did act individually and as representative of the Edward J. Brandt-Dent Company for the sale of said automatic cashiers to the United States Government, and represented the said Edward J. Brandt-Dent Company in the making of the agreement and contract for the purchase of said two hundred and fifty (250) machines by the said United States Government and the said department thereof; and that the said George F. Miller and the said Edmund H. Driggs represented the said Edward J. Brandt-Dent Company in the negotiations and agreements and transactions herein above set forth with the said Government of the United States and the said department thereof, and with the said George W. Beavers, being then and there such officer of the said Government as aforesaid; and that the said George W. Beavers, being then and there such officer of the said Government as aforesaid, did, on the sixteenth day of July in the year of our Lord one thousand nine hundred, in the borough of Brooklyn, in the county of Kings and in the eastern district of New York, and within the jurisdiction of this court, knowingly, wilfully and unlawfully receive and take money, property and other valuable consideration, to wit, the sum of eight hundred and forty dollars ($840) and of the value and amount of eight hundred and forty dollars ($840.) estimated in lawful money of the United States, by knowingly, wilfully and unlawfully receiving a certain check and order for the payment of money from the said Edmund H. Driggs, he being then and there such Congressman as aforesaid, which said check
39 was made by the said Edmund H. Driggs and was payable then and there to the order of the said George W. Beavers, and was drawn on the First National Bank of the City of Brooklyn, and which said check was duly endorsed and deposited on the said sixteenth day of July in the year of our Lord 1900, by the said George W. Beavers to his account in the Nassau Trust Company in the said borough of Brooklyn, and which said check was duly paid and the proceeds knowingly, wilfully and unlawfully received by the said George W. Beavers, he being then and there such officer of said Government as aforesaid, and which said check was paid to the said George W. Beavers in payment of and in part payment for, and was on account of and as a part of the consideration for procuring and aiding to procure said certain contract from the Government of the United States and said department thereof, to wit, the Post Office Department of the United States, for the said Edward J. Brandt-Dent Company, and which said contract was for the making and delivery of two hundred and fifty (250) automatic cashiers made by the said Edward J. Brandt-Dent Company for the Government of the United States and the said department thereof, to wit, the Post

Office Department of the United States, and delivered by the said company to the said United States and the said department thereof, and purchased and paid for by the said United States; which said contract had been and was theretofore procured from the Government of the United States and the said department thereof, for the said Edward J. Brandt-Dent Company, in the manner aforesaid, by him, the said George W. Beavers, he, the said George W. Beavers being then and there such officer of said Government aforesaid, against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States in such case made and provided.

WM. J. YOUNGS,
United States Attorney for the Eastern District of New York.

40 [Endorsed:] United States circuit court, eastern district of New York. The United States of America *vs.* George W. Beavers. Indictment No. 1. Indictment. Section 1781 R. S. U. S. Wm. J. Youngs, United States attorney, Federal building, borough of Brooklyn, New York city, New York. Copy. A true bill. ——— ———, foreman. Filed July 16, 1903. *190–.*

41 EXHIBIT VII.

Circuit Court of the United States of America for the Eastern District of New York.

At a stated term of the circuit court of the United States of America, for the eastern district of New York, begun and held in the borough of Brooklyn, city of New York, within and for the district aforesaid, on the thirteenth day of July, in the year of our Lord one thousand nine hundred and three, and continued by adjournment to and including the sixteenth day of July, in the year of our Lord one thousand nine hundred and three.

EASTERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America, within and for the district aforesaid, on their oaths present, that George W. Beavers, late of the borough of Brooklyn, in the county of Kings and eastern district of New York, was, on the fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and on all the other divers days and times between that day and the fourth day of March in the year of our Lord one thousand nine hundred and one, an officer of the Government of the United States and a clerk in the employ of the said Government of the United States, that is to say, chief of the salary and allowance division of the Post Office Department of the Government of the

United States, and during all of said days and times was actively engaged in the performance of his duties as such officer of the said Government, and acting as such clerk in the employ of the said Government and in receipt of pay for said employment from the said Government of the United States, and that the Edward J. Brandt-Dent Company, was on the said fifth day of March in the year of our Lord one thousand eight hundred and ninety-nine, and on all the divers other days and times between that day and the fourth day of March in the year of our Lord one thousand nine hundred
42 and one, a corporation duly organized under the laws of the State of Wisconsin, and doing business in the United States of America and that on the 19th day of May in the year of our Lord one thousand eight hundred and ninety nine an agreement was made by and between the said Edward J. Brandt-Dent Company and the United States of America and a department thereof, namely the Post Office Department of the Government of the said United States of America for the making and delivery to the said Post Office Department of the United States of two hundred and fifty Brandt automatic cashiers which were to be made and which were thereafter made by the said Edward J. Brandt-Dent Company for said Government of the United States and said department thereof, to-wit, the Post Office Department of said United States, and to be thereafter and which were thereafter delivered by the said company to the United States Government and the said department thereof at and for the price of one hundred and fifty dollars each, as fast as the said machines should be ordered by said United States Government, which said machines were thereafter ordered by and delivered to and purchased by and paid for by the said United States and that the said contract was at that time and had been theretofore procured from the said United States Government and said department thereof, namely the Post Office Department of said United States Government by and through the assistance and with the aid of the said George W. Beavers, he being then and there such officer of said Government as aforesaid, and the giving of the said contract by the said Government to the said Edward J. Brandt-Dent Company having been recommended and urged by the said George W. Beavers as said officer as aforesaid, to the First Assistant Postmaster General of the United States and having been approved by him on behalf of the said United States and said department thereof by the said First Assist-
42½ ant Postmaster General of the said United States, because of and on the said recommendation of the said George W. Beavers, he being then and there such officer as aforesaid, and that one Edmund H. Driggs was on the 5th day of March in the year of our Lord one thousand eight hundred and ninety-nine and all the divers other days and times between that day and the fourth day of March in the year of our Lord one thousand nine hundred and one a member of Congress of the United States, duly elected and qualified, to-wit, a Representative in the House of Representa-

tives of said Congress, duly elected from the third congressional district of the State of New York and during all said days and times was actively engaged in the performance of his duties as such member of Congress, and that on all the days and times between such fifth day of March in the year of our Lord one thousand eight hundred and ninety-nine and the said fourth day of March in the year of our Lord one thousand nine hundred and one, one George F. Miller was acting and did act, individually and as the representative of the said Edward J. Brandt-Dent Company for the sale of the said automatic cashiers to the said United States Government and represented the said Edward J. Brandt-Dent Company in the making of the said agreement and contract for the purchase of the said two hundred and fifty automatic cashiers by the said United States Government and said department thereof, and that the said George F. Miller, and the said Edmund H. Driggs represented the said Edward J. Brandt-Dent Company in the negotiations, agreements and transactions hereinbefore set forth with the said George W. Beavers, he being then and there such officer of such Government as aforesaid, which fact was then and there well known to the said Edmund H. Driggs and the said George F. Miller,
43 and the said George W. Beavers being then and there such officer of the Government of the United States, that is to say, such clerk in the employ of the Government of the United States as aforesaid, did, on the seventeenth day of July in the year of our Lord one thousand nine hundred in the borough of Brooklyn in the county of Kings and the eastern district of New York, and within the jurisdiction of this court, knowingly, wilfully and unlawfully, receive compensation for the said services hereinbefore recited, which said services had been rendered by the said George W. Beavers to the said Edward J. Brandt-Dent Company and to the said Edmund H. Driggs and the said George F. Miller, in relation to the said contract and proceeding between the United States and in which the United States was a party, and the said Edward J. Brandt-Dent Company for the manufacture and delivery of said two hundred and fifty Brandt automatic cashiers as hereinbefore set fort-, to wit, said George W. Beavers did then and there knowingly, wilfully and unlawfully receive and take money, property and other valuable consideration, to wit, the sum of eight hundred and forty dollars and of the value and amount of eight hundred and forty dollars estimated in the lawful money of the United States as compensation for his said services rendered to the Edward J. Brandt-Dent Company and the said George F. Miller and the said Edmund H. Driggs, by knowingly, wilfully and unlawfully receiving a certain check or order for the payment of money from said Edmund H. Driggs, he being then and there such Congressman as aforesaid and he, the said George W. Beavers being then and there such officer and clerk in the employ of the Government of the United States as aforesaid, which said check was made by the said Edmund H. Driggs and was payable

to the order of the said George W. Beavers and was drawn on
44 the First National Bank of Brooklyn, New York and which said check was duly endorsed and deposited by the said George W. Beavers to his account in the Nassau Trust Company in said borough of Brooklyn on the said seventeenth day of July in the year of our Lord one thousand nine hundred and which check was duly paid and the proceeds knowingly, wilfully and unlawfully received by the said George W. Beavers, he being then and there such officer of said Government as aforesaid, and which check was knowingly, wilfully and unlawfully paid to and received by the said George W. Beavers in payment of and as compensation for services rendered as hereinbefore set forth by the said George W. Beavers, he being then and there such officer and clerk in the employ of the said Government as aforesaid, to the said Edward J. Brandt-Dent Company and the said Edmund H. Driggs and the said George F. Miller in relation to the said contract hereinbefore set forth, procured from the said Government of the United States and said department thereof, to wit, said Post Office Department of the United States for the said Edward J. Brandt-Dent Company, and which said contract was for the making and delivery of the said two hundred and fifty automatic cashiers made by the said Edward J. Brandt-Dent Company for the Government of the United States and said department thereof, to wit, the Post Office Department of the United States, and made and delivered by the said company or the said United States and said department thereof and purchased and paid for by the said United States, to which said contract the United States was a party and in which said contract the United States was interested, and which said services had been rendered by the said George W. Beavers as aforesaid in the course of procuring and in the course of aiding to procure the said contract for the said Edward J. Brandt-Dent Company from the said Government of the United States and the said department thereof in the manner aforesaid by him, the said George W. Beavers, he, the said George W.
45 Beavers, being then and there such officer and clerk in the employ of the said Government of the United States as aforesaid, against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States in such case made and provided.

Second Count.

The jurors of the United States of America, within and for the district aforesaid, on their oaths as aforesaid do further present that George W. Beavers, late of the borough of Brooklyn, in the county of Kings and eastern district of New York, was, on the fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and on all the other divers days and times between that day and the fourth day of March in the year of our Lord one thousand nine hundred and one, an officer of the Government of

the United States and a clerk in the employ of the said Government of the United States, that is to say, chief of the salary and allowance division of the Post Office Department of the Government of the United States, and during all of said days and times was actively engaged in the performance of his duties as such officer of the said Government, and acting as such clerk in the employ of the
45½ said Government and in receipt of pay for said employment from the said Government of the United States, and that the Edward J. Brandt-Dent Company, was on the said fifth day of March in the year of our Lord one thousand eight hundred and ninety-nine and on all the divers other days and times between that day and the fourth day of March in the year of our Lord one thousand nine hundred and one, a corporation duly organized under the laws of the State of Wisconsin, and doing business in the United States of America and that on the 19th day of May in the year of our Lord one thousand eight hundred and ninety-nine an agreement was made by and between the said Edward J. Brandt-Dent Company and the United States of America and a department thereof, namely, the Post Office Department of the Government of the said United States of America for the making and delivery to the said Post Office Department of the United States of two hundred and fifty Brandt automatic cashiers which were to be made and which were thereafter made by the said Edward J. Brandt-Dent Company for said Government of the United States and said department thereof, to it, the Post Office Department of said United States, and to be thereafter and which were thereafter delivered by the said company to the United States Government and the said department thereof at and for the price of one hundred and fifty dollars each, as fast as the said machines should be ordered by said United States Government, with said machines were thereafter ordered by and delivered to and purchased by and paid for by the said United States and that the said contract was at that time and had been theretofore procured from the said United States Government and said department thereof, namely, the Post Office Department of said United States Government by and through the assistance and with the aid of the said George W. Beavers, he being then and there such officer of said Government, as aforesaid, and the giving of the said contract by the said
46 Government to the said Edward J. Brandt-Dent Company having been recommended and urged by the said George W. Beavers as said officer as aforesaid, to the First Assistant Postmaster General of the United States and having been approved by him on behalf of the said United States and said department thereof by the said First Assistant Postmater General of the said United States, because of and on the said recommendation of the said George W. Beavers, he being then and there such officer as aforesaid, and that one Edmund H. Driggs was on the 5th day of March in the year of our Lord one thousand eight hundred and ninety-nine and all the divers other days and times between that day and the fourth

day of March in the year of our Lord one thousand nine hundred and one a member of Congress of the United States, duly elected and qualified, to wit, a Representative in the House of Representatives of said Congress, duly elected from the third congressional district of the State of New York and during all said days and times was actively engaged in the performance of his duties as such member of Congress, and that on all the days and times between such fifth day of March in the year of our Lord one thousand eight hundred and ninety-nine and the said fourth day of March in the year of our Lord one thousand nine hundred and one, one George F. Miller was acting and did act, individually and as the representative of the said Edward J. Brandt-Dent Company for the sale of the said automatic cashiers to the said United States Government and represented the said Edward J. Brandt-Dent Company in the making of the said agreement and contract for the purchase of the said two hundred and fifty automatic cashiers by the said United States Government and said department thereof, and that the said George W. Beavers and the said Edmund H. Driggs represented the said Edward J. Brandt-Dent Company in the negotiations,
agreements and transactions hereinbefore set forth with the
47 said George W. Beavers, he being then and there such officer
of such Government as aforesaid, which fact was then and there well known to the said Edmund H. Driggs and the said George F. Miller, and the said George W. Beavers being then and there such officer of the Government of the United States, that is to say, such clerk in the employ of the Government of the United States as aforesaid, did, on a certain day between the nineteenth day of July, in the year of our Lord one thousand nine hundred and the twenty-fifth day of July, in the year of our Lord one thousand nine hundred, the precise date of which is unknown to the jurors aforesaid, and cannot therefore more definitely be stated, in the borough of Brooklyn in the county of Kings and the eastern district of New York, and within the jurisdiction of this court, knowingly, wilfully and unlawfully, receive compensation for the said services hereinbefore recited, which said services had been rendered by the said George W. Beavers to the said Edward J. Brandt-Dent Company and to the said Edmund H. Driggs and the said George F. Miller, in relation to the said contract and proceeding between the United States in which the United States was a party, and the said Edward J. Brandt-Dent Company for the manufacture and delivery of said two hundred and fifty Brandt automatic cashiers as hereinbefore set forth, to wit, said George W. Beavers did then and there knowingly, wilfully and unlawfully receive and take money, property and other valuable consideration, to wit, the sum of eight hundred and ten dollars and of the value and amount of eight hundred and ten dollars estimated in the lawful money of the United States as compensation for his said services rendered to the Edward J. Brandt-
Dent Company and the said George F. Miller and the said
48 Edmund H. Driggs, by knowingly, wilfully and unlawfully
receiving a certain check and order for the payment of money

from said Edmund H. Driggs, he being then and there such Congressman as aforesaid and he, the said George W. Beavers being then and there such officer and clerk in the employ of the Government of the United States as aforesaid, which said check was made by the said Edmund H. Driggs and was payable to the order of the said George W. Beavers and was drawn on the First National Bank of Brooklyn, New York and which said check was duly endorsed and deposited by the said George W. Beavers to his account in the Nassau Trust Company in said borough of Brooklyn on the twenty-fifth day of July, in the year of our Lord one thousand nine hundred, and which check was then and there duly paid and the proceeds knowingly, wilfully and unlawfully received by the said George W. Beavers, he being then and there such officer of the said Government as aforesaid and which check was knowingly, wilfully and unlawfully paid to and received by the said George W. Beavers, in payment of and as compensation for services rendered as hereinbefore set forth, by the said George W. Beavers, he being then and there such officer and clerk in the employ of the said Government as aforesaid, to the said Edward J. Brandt-Dent Company, and the said Edmund H. Driggs, and the said George F. Miller, in relation to the said contract hereinbefore set forth, and procured from the said Government of the United States and the said department thereof, to wit, the Post Office Department of the United States, for the said Edward J. Brandt-Dent Company, and which said contract was for the making and delivery of the said two hundred and fifty automatic cashiers made by the said Edward J. Brandt-Dent Company, for the Government of the United States and said department thereof, to wit, the Post Office Department of the United States and made and delivered by said company
for the said United States and said department thereof,
49 and purchased and paid for by the said United States, to
which said contract the United States was a party and in which said contract the said United States was interested, and that said services had been rendered by the said George W. Beavers as aforesaid in the course of procuring and in the course of aiding to procure the said contract for the said Edward J. Brandt-Dent Company from the said Government of the United States and the said department thereof, in the manner aforesaid, by him, the said George W. Beavers, he, the said George W. Beavers, being then and there such officer and clerk in the employ of the said Government of the United States as aforesaid, against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States in such case made and provided.

50 *Third Count.*

The jurors of the United States of America, within and for the district aforesaid, on their oaths as aforesaid do further present that George W. Beavers, late of the borough of Brooklyn, county of

Kings and eastern district of New York, was, on the fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and on all the divers other days and times between that day and the fourth day of March, in the year of our Lord one thousand nine hundred and one, an officer of the Government of the United States and a clerk in the employ of said Government of the United States, that is to say, chief of the salary and allowance division of the Post Office Department of the Government of the United States, and during all of said days and times was actively engaged in the performance of his duties as such officer of said Government and acting as such clerk in the employ of the said Government and in receipt of pay for said employment from the said Government of the United States, and that the Edward J. Brandt-Dent Company, was on said fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine and at all the other days and times between that day and the fourth day of March in the year of our Lord one thousand nine hundred and one, a corporation duly organized under the laws of the State of Wisconsin, and doing business in the United States of America, and that on the nineteenth day of May in the year of our Lord one thousand eight hundred and ninety-nine, an agreement was made by and between the said Edward
51 J. Brandt-Dent Company and the United States of America and a department thereof, namely, the Post Office Department of the Government of the said United States of America, for the making and delivery to the said Post Office Department of the United States, of two hundred and fifty Brandt automatic cashiers, which were to be made and which were thereafter made by the said Edward J. Brandt-Dent Company for said Government of the United States and said department thereof, to wit, the Post Office Department of the United States, and to be thereafter and which were thereafter delivered by said company to the United States and the said department thereof at and for the price of one hundred and fifty dollars each, as fast as said machines should be ordered by the said United States Government, which said machines were thereafter ordered by and delivered to and purchased and paid for by the said United States, and that the said contract was at that time and had been theretofore procured from the said United States Government and the said department thereof, namely, the Post Office Department of the said United States Government, by and through the assistance and with the aid of the said George W. Beavers, he being then and there such officer of said Government as aforesaid and the giving of said contract by the said Government to the said Edward J. Brandt-Dent Company having been recommended and urged by the said George W. Beavers, as such officer as aforesaid, to the First Assistant Postmaster General of the United States and having been approved of by him on behalf of the said United States and said department thereof, by the said First Assistant Postmaster General of the said United States, because of and on the said recommendation of the said George W. Beavers, he being then and there such

officer as aforesaid, and that one Edmund H. Driggs, was on the
51½ fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and on all the other divers days and times between that day and the fourth day of March, in the year of our Lord one thousand nine hundred and one, a member of Congress of the United States, duly elected and qualified, to wit, a Representative in the House of Representatives of said Congress, duly elected from the third congressional district of the State of New York and during all of said days and times was actively engaged in the performance of his duties as such member of Congress and that on all the days and times between such fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine and the said fourth day of March, in the year of our Lord one thousand nine hundred and one, one George F. Miller, was acting and did act individually and as the representative of the Edward J. Brandt-Dent Company, for the sale of said automatic cashiers to the said United States Government and represented the said Edward J. Brandt-Dent Company in the making of the said agreement and contract for the purchase of the said two hundred and fifty cashiers by the said United States Government and the said department thereof and that the said George F. Miller and the said Edmund H. Driggs represented the said Edward J. Brandt-Dent Company in the negotiations and agreements and transactions hereinbefore set forth with the said George W. Beavers, he being then and there such officer of said Government as aforesaid, which fact was then and there well known to the said Edmund H. Driggs and the said George F. Miller, and he, the said George W. Beavers being then and there such officer of the Government of the United States, that is to say, such clerk in the employ of the Government of the United States,

as aforesaid, did, on a certain day between the fifth day of
52 November, in the year of our Lord one thousand nine hundred and the twenty-eighth day of November, in the year of our Lord one thousand nine hundred, the precise date of which is to the jurors aforesaid unknown and cannot therefore more definitely be stated, in the borough of Brooklyn, county of Kings and the eastern district of New York, and within the jurisdiction of this court, knowingly, wilfully and unlawfully receive compensation for the said services hereinbefore recited, which said services had been rendered by the said George W. Beavers to the said Edward J. Brandt-Dent Company and to the said Edmund H. Driggs and the said George F. Miller in relation to the said contract and proceeding between the United States and in which the United States was a party, and the said Edward J. Brandt-Dent Company, for the manufacture and delivery of the said two hundred and fifty Brandt automatic cashiers, as hereinbefore set forth, to wit, the said George W. Beavers did then and there knowingly, wilfully and unlawfully receive and take money, property and other valuable consideration, to wit, the sum of two hundred and fifty dollars and of the value and amount of two hundred and fifty dollars estimated in the law-

ful money of the United States of America, as compensation for his said services rendered to the said Edward J. Brandt-Dent Company, and the said George F. Miller and the said Edmund H. Driggs, by knowingly, wilfully and unlawfully receiving a certain check and order for the payment of money from the said Edmund H. Driggs, he being then and there such Congressman as aforesaid, and he, the said George W. Beavers, being then and there such officer and clerk in the employ of the United States as aforesaid, which said check was made by the said Edmund H. Driggs, and was payable to the order of the said George W. Beavers, and was drawn on the First National Bank of
53 Brooklyn, New York, and which said check was duly endorsed and deposited by the said George W. Beavers to his account in the Nassau Trust Company in said borough of Brooklyn, on the said twenty-eighth day of November, in the year of our Lord one thousand nine hundred, and which said check was then and there duly paid and the proceeds knowingly, wilfully and unlawfully received by the said George W. Beavers, he being then and there such officer of the said Government as aforesaid and which check was knowingly, wilfully and unlawfully paid to and received by the said George W. Beavers in payment of and as compensation for services rendered as hereinbefore set forth, by the said George W. Beavers, he being then and there such officer and clerk in the employ of the said Government as aforesaid, to the said Edward J. Brandt-Dent Company, and the said Edmund H. Driggs, and the said George F. Miller, in relation to the said contract hereinbefore set forth, procured from the said Government of the United States and the said department thereof, to wit, the Post Office Department of the United States, for the said Edward J. Brandt-Dent Company, and which said contract was for the making and delivery of the said two hundred and fifty automatic cashiers made by the said Edward J. Brandt-Dent Company for the Government of the United States and said department thereof, to wit, the Post Office Department of the United States and made and delivered by said company for the said United States and said department thereof, and purchased and paid for by the said United States, to which said contract the United States was a party and in which said contract the said United States was interested, and that said services had been rendered by the said George W. Beavers as aforesaid in the course of procuring and in the course of aiding to procure the said con-
54 tract for the said Edward J. Brandt-Dent Company from the said Government of the United States and the said department thereof, in the manner aforesaid, by him, the said George W. Beavers, he, the said George W. Beavers, being then and there such officer and clerk in the employ of the said Government of the United States as aforesaid, against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States in such case made and provided.

Fourth Count.

The jurors of the United States of America, within and for the district aforesaid, on their oaths, as aforesaid, do further present that George W. Beavers, late of the borough of Brooklyn, in the county of Kings and eastern district of New York, was, on the fifth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, and on all the other divers days and times between that day and the fourth day of March in the year of our Lord one thousand nine hundred and one, an officer of the Government of the United States and a clerk in the employ of the said Government of the United States, that is to say, chief of the salary and allowance division of the Post Office Department of the Government of the United States, and during all of said days and times was actively engaged in the performance of his duties as such officer of the said Government, and acting as such
55 clerk in the employ of the said Government and in receipt of pay for said employment from the said Government of the United States, and that the Edward J. Brandt-Dent Company was on the said fifth day of March in the year of our Lord one thousand eight hundred and ninety-nine and on all the divers other days and times between that day and the fourth day of March in the year of our Lord one thousand nine hundred and one, a corporation duly organized under the laws of the State of Wisconsin, and doing business in the United States of America and that on the 19th day of May in the year of our Lord one thousand eight hundred and ninety-nine an agreement was made by and between the said Edward J. Brandt-Dent Company and the United States of America and a department thereof, namely, the Post Office Department of the Government of the said United States of America for the making and delivery to the said Post Office Department of the United States of two hundred and fifty Brandt automatic cashiers which were to be made and which were thereafter made by the said Edward J. Brandt-Dent Company for said Government of the United States and said department thereof, to wit, the Post Office Department of said United States, and to be thereafter and which were thereafter delivered by the said company to the United States Government and the said department thereof at and for the price of one hundred and fifty dollars each, as fast as the said machines should be order- by said United States Government, which said machines were thereafter ordered by and delivered to and purchased by and paid for by the said United States and that the said contract was at that time and had been theretofore procured from the said United States Government and said department thereof, namely, the Post Office Department of said United States Government, by and through the assistance and with the aid of the said George W. Beavers, he being then and there such officer of

said Government as aforesaid, and the giving of the said
56 contract by the said Government to the said Edward J. Brandt-Dent Company having been recommended and urged by the said George W. Beavers as said officer as aforesaid, to the First Assistant Postmaster General of the United States and having been approved by him on behalf of the said United States and said department thereof by the said First Assistant Postmaster General of the said United States, because of and on the said recommendation of the said George W. Beavers, he being then and there such officer as aforesaid, and that one Edmund H. Driggs was on the 5th day of March in the year of our Lord one thousand eight hundred and ninety-nine and all the divers other days and times between that day and the fourth day of March in the year of our Lord one thousand nine hundred and one a member of Congress of the United States, duly elected and qualified, to wit, a Representative in the House of Representatives of said Congress, duly elected from the third congressional district of the State of New York and during all said days and times was actively engaged in the performance of his duties as such member of Congress, and that on all the days and times between such fifth day of March in the year of our Lord one thousand eight hundred and ninety-nine and the said fourth day of March in the year of our Lord one thousand nine hundred and one, one George F. Miller was acting and did act, individually and as the representative of the said Edward J. Brandt-Dent Company for the sale of the said automatic cashiers to the said United States Government and represented the said Edward J. Brandt-Dent Company in the making of the said agreement and contract for the purchase of the said two hundred and fifty automatic cashiers by the said United States Government and said department thereof, and that the said George F. Miller and the said Edmund H. Driggs represented the said Edward J. Brant-Dent Company in the negotiations, agreements, and transactions hereinbefore set forth with the said George W. Beavers, he being
then and there such officer of such Government as afore-
57 said, which fact was then and there well known to the said Edmund H. Driggs and the said George F. Mill-r, and the said George W. Beavers being then and there such officer of the Government of the United States, that is to say, such clerk in the employ of the Government of the United States as aforesaid, did, on the sixteenth day of July in the year of our Lord one thousand nine hundred, in the borough of Brooklyn, county of Kings and the eastern district of New York, and within the jurisdiction of this court, knowingly, wilfully and unlawfully receive compensation for the said services hereinbefore recited, which said services had been rendered by the said George W. Beavers, to the said Edward J. Brandt-Dent Company, and to the said Edmund H. Driggs and the said George F. Miller, in relation to the said contract and proceeding between the United States and in which the United States was a party, and the said Edward J. Brandt-Dent

Company, for the manufacture and delivery of the said two hundred and fifty Brandt automatic cashiers, as hereinbefore set forth, to wit, the said George W. Beavers, did then and there knowingly, wilfully and unlawfully, receive and take money, property and other valuable consideration, to wit, the sum of two hundred and fifty dollars and of the value and amount of two hundred and fifty dollars estimated in the lawful money of the United States of America, as compensation for his said services rendered to the said Edward J. Brandt-Dent Company, and the said George F. Miller and the said Edmund H. Driggs, by knowingly, wilfully and unlawfully receiving a certain check or order for the payment of money from the said Edmund H. Driggs, he being then and there such Congressman as aforesaid, and he, the said George W. Beavers, being then and there such officer and clerk in the employ of the United States as aforesaid, which said check was made by the said Edmund H. Driggs, and was payable to the order of the said George W. Beavers, and was drawn on the First National Bank of Brooklyn, New York, and which said check was
58 duly endorsed and deposited by the said George W. Beavers to his account in the Nassau Trust Company in said borough of Brooklyn, on the said twenty-eighth day of November, in the year of our Lord one thousand nine hundred, and which said check was then and there duly paid and the proceeds knowingly, wilfully and unlawfully received by the said George W. Beavers, he being then and there such officer of the said Government as aforesaid and which check was knowingly, wilfully and unlawfully paid to and received by the said George W. Beavers, in payment of and as compensation for services rendered as hereinbefore set forth, by the said George W. Beavers, he being then and there such officer and clerk in the employ of the said Government as aforesaid, to the said Edward J. Brandt-Dent Company, and the said Edmund H. Driggs, and the said George F. Miller, in relation to the said contract hereinbefore set forth, procured from the said Government of the United States and the said department thereof, to wit, the Post Office Department of the United States, for the said Edward J. Brandt-Dent Company, and which said contract was for the making and delivery of the said two hundred and fifty automatic cashiers made by the said Edward J. Brandt-Dent Company, for the Government of the United States and said department thereof, to wit, the Post Office Department of the United States and made and delivered by said company for the said United States and department thereof, and purchased and paid for by the said United States, to which said contract the United States was a party and in which said contract the said United States was interested, and that said services had been rendered by the said George W. Beavers as aforesaid in the course of procuring the said contract for the said Edward J. Brandt-Dent Company from the said Government of the United States and the said department thereof, in the manner aforesaid, by him, the said George W. Beavers, he, the said George W. Beavers, being then

and there such officer and clerk in the employ of the said Government of the United States as aforesaid, against the peace and
59 dignity of the United States of America, and contrary to the form of the statute of the said United States in such case made and provided.

WM. J. YOUNGS,
United States Attorney for the Eastern District of New York.

60 [Endorsed:] United States circuit court, eastern district of New York. The United States of America vs. George W. Beavers. Indictment No. 2. Indictment. Section 1782 R. S. U. S. Wm. J. Youngs, United States attorney, Federal building, borough of Brooklyn, New York city, New York. Copy. A true bill. ——, foreman. Filed July 16, 1903.

61 EXHIBIT VIII.

In the Circuit Court of the United States of America for the Eastern District of New York, of the July Term, in the Year of our Lord Nineteen Hundred and Three.

EASTERN DISTRICT OF NEW YORK, ss:

The grand jurors for the United States of America inquiring for the eastern district of New York, upon their oath present, that George W. Beavers late of the borough of Brooklyn, in the district aforesaid before and on the 25th day of July, in the year of our Lord, nineteen hundred, was an officer of the Government of the said United States, that is to say, superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the United States of the city of Washington in the District of Columbia; that he, the said George W. Beavers, by reason of his being such officer, under the laws and the regulations theretofore and then pursuant to law prescribed and promulgated by the Postmaster General of the United States for the government of the Post Office Department of the said United States and the conduct of its officers and clerks, and then in force, was charged amongst other things, with the consideration of allowances for miscellaneous and incidental expenditures of, and with the procuring of contract- and undertakings with and from persons proposing to furnish supplies to, the said Post Office Department, involving outlays and increase of expenditures of the monies of the said United States appropriated by law for the service of the said department and also of making purchases of supplies for the said department out of said monies so appropriated as aforesaid and procuring contracts to be made by the said First Assistant Postmaster General with those persons pertaining to such purchases, at the places and in the manner in which such sup-

plies are usually bought and sold between individuals,—of
62 the prescribing and promulgating of which said regulations he the said George W. Beavers then and there had notice; and that, by reason of his being and acting as such officer,—*did* then and there became and was the duty of the said George W. Beavers, when discharging the duties with which he was so charged as aforesaid, *the* carefully guard the interests of the United States, and observe the laws thereof and the regulations aforesaid, to secure, by all reasonable means and in the manner provided by law and the regulations aforesaid, terms as favorable to the said United States as possible when making contracts with and procuring undertakings from persons proposing to furnish supplies for the said department involving outlays and increases of expenditures of the monies appropriated as aforesaid, and to obtain by purchase or contract such supplies, out of the same monies as cheaply as possible, by all reasonable means and in the manner provided by law and the regulations aforesaid; and that, because as the grand jurors aforesaid, upon their oath aforesaid, charge the fact to be, special trust and confidence were reposed in the said George W. Beavers by his superior officers, the Postmaster General and the First Assistant Postmaster General of the United States, by reason of his being such officer of the Government *and* it then and there also became and was the duty of the said George W. Beavers under the law and the said regulations, to faithfully and truthfully advise his said superior officers concerning all the matters requiring their supervision and notice, and pertaining to the discharge of his, the said George W. Beavers's said duties, and to inform them truly concerning all allowances for the incidental expenditures and contracts and purchases considered by him in the discharge of his said duties, and concerning all bills rendered against the said United States
63 and the said Post Office Department in connection with such allowances, contracts and purchases, and especially in connection with the purchase of automatic cashiers for the use of said department, and of post offices under the same.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, on the said twenty-fifth day of July in the year of our Lord nineteen hundred, at Brooklyn, aforesaid, in the said eastern district of New York, the Edward J. Brandt-Dent Company, was a corporation then and there existing under that name, and was then and there engaged in the business of selling, so-called Brandt automatic cashiers, and then and there had made a fraudulent agreement with the said George W. Beavers, officer as aforesaid, whereby the said George W. Beavers was to recommend to the First Assistant Postmaster-General the ordering and purchasing of a large number, to wit, two hundred and fifty, of the said automatic cashiers, for the use of the said Post Office Department, and thereby procure and aid in procuring for the said Edward J. Brandt-Dent Company the business of and contract for furnishing the said automatic cashiers to the said Post Office Department to be paid for out of the

monies appropriated as aforesaid, upon condition that the said Edward J. Brandt-Dent Company should give to him, the said George W. Beavers, for his private use and benefit, from time to time as the said Edward J. Brandt-Dent Company should receive the same, some considerable portion (the exact proportion whereof is to the said grand jurors unknown), of the monies which should be paid to the said Edward J. Brandt-Dent Company on account of, the furnishing of said automatic cashiers; and, further, that on the twenty-fifth day of July,
64 in the said year aforesaid, at Brooklyn aforesaid, in the said eastern district of New York, the said George W. Beavers, in pursuance to the said fraudulent agreement, and because of his having, contrary to his said duties and trust, fraudulently procured and aided in procuring for the said Edward J. Brandt-Dent Company the business and contract aforesaid, and because the said Edward J. Brandt-Dent Company had under that contract furnished the said automatic cashiers to the said Post Office Department, and had been paid for the same, at the rate of one hundred and fifty dollars each, out of the moneys so appropriated as aforesaid, unlawfully did, while still being such officer as aforesaid, take and receive from the said Edward J. Brandt-Dent Company, certain money, to wit, the sum of eight hundred and ten dollars; and that the said money was, as he the said George W. Beavers then and there well knew, money and consideration for his having procured the said contract for the said Edward J. Brandt-Dent Company as aforesaid; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

2. And the said grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers, on the said twenty-fifth day of July, in the same year of our Lord nineteen hundred, was an officer of the Government of the said United States, that is to say, superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the said United States, as in the first count of this indictment set forth, and was, by reason of his being such officer, charged with the trust and duties in the said first count mentioned, and, under the
65 circumstances therein set forth, and in pursuance of the fraudulent agreement therein mentioned, had procured and aided in procuring for the said, The Edward J. Brandt-Dent Company the business of and contract for furnishing a large number, to wit, two hundred and fifty other automatic cashiers of the kind described in the said first count, upon the condition in the same count mentioned, and, because the said Edward J. Brandt-Dent Company had, under the last mentioned contract, furnished the automatic cashiers last aforesaid to the said Post Office Department and had been paid for the same at the rate of one hundred and fifty dollars each, out of the moneys appropriated as in the said count aforesaid, unlawfully did, while still being such officer as aforesaid, take and receive from the said Edward J. Brandt-Dent Company certain valuable property and

consideration, to wit; a check drawn by one Edmund H. Driggs upon the First National Bank of Brooklyn aforesaid, for the payment of eight hundred and ten dollars to the order of the said George W. Beavers, and of the value of eight hundred and ten dollars; and that the said check was, as he the said George W. Beavers then and there well knew, consideration for his having procured the business and contract in this count of this indictment mentioned for the said Edward J. Brandt-Dent Company; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers, on the said twenty-fifth day of July in the same year of our Lord nineteen hundred, was an officer of the Government of the United States, that is to say, superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the said United States, as
66 in the first count of this indictment set forth and was by reason of his being such officer charged with the trust and duties in the first count mentioned, and, under the circumstances therein set forth, and — pursuance to the fraudulent agreement therein mentioned, had procured and aided in procuring for the said Edward J. Brandt-Dent Company the business of and contract for furnishing a large number, to wit, two hundred and fifty, other automatic cashiers, of the kind described in the said first count, upon the condition in the same count mentioned, and, because the said Edward J. Brandt-Dent Company had under the last mentioned contract, furnished the automatic cashiers last aforesaid to the said Post Office Department, and had been paid for the same, at the rate of one hundred and fifty dollars each, out of the money appropriated as in the said first count aforesaid, unlawfully did, while still being such officer as aforesaid, take and receive from the said Edward J. Brandt-Dent Company certain money, to wit, the sum of eight hundred and ten dollars; and that the same was, as he the said George W. Beavers then and there well knew, money and consideration for his having procured the said contract for the Edward J. Brandt-Dent Company as aforesaid; which said money in this count mentioned as having been received by the said George W. Beavers then and there, to wit, at the time and place, when and where the same was so received by him as aforesaid, was delivered and paid to the said George W. Beavers by the hands of one George F. Miller and the said Edmund H. Driggs who were then and there the agents of and persons acting for and on behalf of the said Edward J. Brandt-Dent Company in that transaction.

And so the grand jurors aforesaid, upon their oath afore-
67 said, do say, that the said George W. Beavers, at the time and place and in the manner and form in this count of this indictment aforesaid, while being an officer of the Government of the said United States unlawfully did take and receive money from another person for procuring and aiding to procure a contract from

the said Post Office Department of the said Government against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers on the twenty eighth day of November, in the same year of our Lord nineteen hundred, was an officer of the Government of the said United States, that is to say; superintendent of the said salaries and allowances in the office of the First Assistant Postmaster General of the said United States, as in the first count of this indictment set forth, and was, by reason of his being such officer, charged with the trust and duties in the said first count mentioned, and, under the circumstances therein set forth, and in pursuance to the fraudulent agreement therein mentioned, had procured and aided in procuring for the said Edward J. Brandt-Dent Company the business of and contract for furnishing a large number, to wit, two hundred and fifty, other automatic cashiers, of the kind described in the said first count, upon the condition in the same count mentioned, and because the said Edward J. Brandt-Dent Company had under the last mentioned contract, furnished the automatic cashiers last aforesaid to the said Post Office Department, and had been paid for the same, at the rate of one hundred and fifty dollars each, out of the monies appropriated as in the said first count aforesaid, unlawfully did, while still being such officer as aforesaid, take and receive from the said Edward J.
68 Brandt- — Company certain money, to wit, the sum of two hundred and fifty dollars; and that the same was, and he the said George W. Beavers then and there well knew the same to be, money in consideration for his having procured the business and contract in this count of this indictment mentioned for the Edward J. Brandt-Dent Company from the Post Office Department of the Government of the said United States; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers on the twenty eighth day of November, in the same year of our Lord nineteen hundred was an officer of the Government of the said United States, that is to say, superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the said United States, as in the first count in this indictment set forth, and was by reason of his being such officer, charged with the trust and duties in the said first count mentioned, and, under the circumstances therein set forth, and in pursuance to the fraudulent agreement therein mentioned, had procured and aided in procuring for the said Edward J. Brandt-Dent Company the business of and contract for furnishing a large number, to wit, two hundred and fifty other automatic cashiers, of the kind described in the said first count, upon the condition in the same count mentioned, and because the said Edward J. Brandt-Dent Company had, under the last mentioned con-

tract, furnished the automatic cashiers last aforesaid to the said Post Office Department, and had been paid for the same, at the rate of one hundred and fifty dollars each, out of the monies appropriated as in the said first
69 count aforesaid, unlawfully did while still being such officer as aforesaid, take and receive from the said Edward J. Brandt-Dent Company certain valuable property and consideration, to wit, a check drawn by one Edmund H. Driggs, upon the First National Bank of Brooklyn aforesaid, for the payment of two hundred and fifty dollars to the order of the said George W. Beavers and of the value of two hundred and fifty dollars; and that the same was, and he the said George W. Beavers, then and there well knew the last mentioned check to be, consideration for his having procured the business and contract in this count of this indictment mentioned for the said Edward J. Brandt-Dent Company from an officer of the said United States, to wit, the First Assistant Postmaster General of the said United States; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

6. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers, on the twenty eighth day of November in the same year of our Lord nineteen hundred, was an officer of the Government of the said United States, that is to say, superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the said United States, as in the first count of this indictment set forth and was, by reason of his being such officer, charged with the trust and duties in the said first count mentioned, and, under the circumstances therein set forth and in pursuance of the fraudulent agreement therein mentioned, had procured and aided in procuring for the said Edward J. Brandt-Dent Company the business of and contract for furnishing a large number to wit, two hundred and fifty other automatic cashiers, of the kind described in the said first count mentioned, and be-
70 cause the said Edward J. Brandt-Dent Company had, under the last mentioned contract, furnished the automatic cashiers last aforesaid to the said Post Office Department, and had been paid for the same at the rate of one hundred and fifty dollars each, out of the monies appropriated as in the said first count aforesaid, unlawfully did, while still being such officer as aforesaid, take and receive from the said Edward J. Brandt-Dent Company, certain moneys, to wit, the sum of two hundred and fifty dollars; and that the same was, and he the said George W. Beavers then and there well knew, the same to be, money and consideration for his having procured the last mentioned contract for the said Edward J. Brandt-Dent Company as aforesaid; which said money in this count mentioned as having been received by the said George W. Beavers then and there, to wit, at the time and place when and where the same was so received by him as aforesaid, was delivered and paid to the said George W. Beavers by the said Edmund H. Driggs, who then and

there was the agent of the person acting for and on behalf of the said Edward J. Brandt-Dent Company in that transaction.

And so the grand jurors aforesaid, upon their oath aforesaid, do say that the said George W. Beavers at the time and place and in the manner and form in this count of this indictment aforesaid, while being an officer of the Government of the United States, unlawfully did take and receive money from another person for procuring and aiding to procure for such other person a contract from the Post Office Department of the Government of the United States; against the peace and dignity of the said United States, and contrary to the form of the statute in such case made and provided.

WM. J. YOUNGS,
United States Attorney, Eastern District of New York.

71 Endorsement on indictment.

On second division of the back: 2/287. United States circuit court, eastern district of New York. The United States of America vs. George W. Beavers. Calendar No. 362. Indictment. Sec. 1781, R. S. U. S. William J. Youngs, United States attorney, Federal building, Brooklyn, N. Y. A true bill. George E. Foster, foreman. Filed July 23, 1903.

On third division of back: August 12, 1903, United States attorney moves for bench warrant. Motion granted. Order entered. August 14, 1903. Bench warrant issued.

72 EXHIBIT IX.

The President of the United States of America to the marshal of the United States for the southern district of New York and to his deputies or any or either of them:

Whereas, one George W. Beavers has been arrested and imprisoned in this district by Samuel M. Hitchcock, an United States commissioner for the southern district of New York, for an offence alleged to have been committed in another district, that is to say, for having on the 25th day of July in the year one thousand nine hundred at the eastern district of New York, in the borough of Brooklyn, being at the time an officer of the Government of the United States, that is to say, superintendent of salaries and allowances in the office of the First Assistant Postmaster General of the United States in the city of Washington, District of Columbia, and as such officer being duly charged among other things with the consideration of allowances and expenditures and with the procuring of contracts for supplies and with making purchases of supplies in pursuance of rules and regulations of which said Beavers had notice and in

pursuance of the fraudulent agreement theretofore made by the said Beavers with the Edward J. Brandt-Dent Company, whereby the said Beavers was to recommend and procure contracts for the purchase from said company by the said Postmaster General, for the use of the department of 250 automatic cashiers upon conditions that said Beavers out of the monies received by said company from such purchase should receive a certain portion and in pursuance of said fraudulent agreement and because of his having contrary to his said duties and trust fraudulently procured and aided in procuring for the said company the business and contract aforesaid, and the said company had furnished
73 said cashiers to the said Post Office Department and had been paid for the same the said Beavers did on said day and place while still being such officer receive from said company the sum of $810.00 as the consideration of his having procured the business and contract aforesaid for the said Edward J. Brandt-Dent Company as by reference to the original warrant of arrest and the commitment endorsed thereupon which are hereto attached, will more fully and at large appear; and whereas the said eastern district of New York is that in which trial of said offence is to be had and the United States attorney of this district having applied to me for a warrant of removal under the provisions of section 1014 of the Revised Statutes of the United States.

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to remove the said George W. Beavers forthwith to the eastern district of New York, and to safely deliver him to the marshal of said district or to such person as shall be by the said marshal deputized to receive him.

Given under my hand this 10th day of November, in the year one thousand nine hundred and three.

GEO. C. HOLT,
United States District Judge, Southern District of New York.

Attest:
—— ——, *Clerk.*

The marshal is directed not to execute this warrant until 5 p. m. this day November 10th, 1903.

GEO. C. HOLT, *J.*

74 Endorsements (on back).

U. S. circuit court. The United States of America *vs.* George W. Beavers. Warrant of removal. Henry L. Burnett, U. S. attorney.

I do hereby acknowledge the receipt from William Henkel, United States marshal, for the southern district of New York, of the

body of the within-named George W. Beavers, together with a copy of the within warrant.

Dated, Brooklyn, N. Y. ——, 1903.

——,
U. S. Marshal.

EASTERN DISTRICT OF NEW YORK.

I do hereby certify that there was this day filed in my office the original warrant of removal, of which the within is a copy.

Dated, Brooklyn, N. Y. ——, 1903.

——,
Clerk of the United States Circuit Court for the Eastern District of New York.

75 EXHIBIT X.

United States Circuit Court for the Southern District of New York.

UNITED STATES
against
GEORGE W. BEAVERS.

UNITED STATES OF AMERICA,
Southern District of New York, City of New York, } ss:

Be it remembered that on this 24th day of May, 1904, before me, George B. Adams, judge of the district court of New York, personally came George W. Beavers, as principal and James R. Brown as surety and jointly and severally acknowledged themselves to owe the United States of America the sum of ten thousand ($10,000) dollars, to be levied on their goods and chattels, lands and tenements if default be made in the condition following, to wit: Whereas on the 24th day of May, 1904, the said George W. Beavers did surrender himself into the custody of William Henkel, United States marshal for the southern district of New York for the purpose of removal to the eastern district of New York, under the warrant of removal issued on November 10th, 1903, by Hon. George C. Holt, judge of the district court for the southern district of New York;

Now, therefore, the condition of this recognizance is such that if the said George W. Beavers shall personally appear before the circuit court of the United States, for the eastern district of New York, held in the city of Brooklyn in the district aforesaid, on the first day of the next regular term for the trial of bail cases then and there to answer unto an indictment pending therein for violation of
76 section 1781 of the Revised Statutes of the United States, presented to said court against him on the 23rd day of July 1903, by the grand jury of the United States within and for the eastern district of New York and then and there render himself into

the jurisdiction of the said court and obey and abide the orders of said court and not depart therefrom without the leave of said court, then this recognizance to be void; otherwise to remain in full force and virtue.

GEORGE W. BEAVERS. [SEAL.]
JAMES R. BROWN. [SEAL.]

Taken and acknowledged before me the day and year first above written.

GEO. B. ADAMS, *U. S. D. J.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James R. Brown of 510 West 157th street in the city of New York, being duly sworn, says that he is worth the sum of twenty thousand dollars over and above all his just debts and liabilities.

JAMES R. BROWN.

Sworn to and subscribed before me this 24th day of May, 1904.

GEORGE B. ADAMS, *U. S. D. J.*

Recognizance approved as to form and sufficiency.

HENRY L. BURNETT,
U. S. Attorney.

77

UNITED STATES
vs.
GEORGE W. BEAVERS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James R. Brown being duly sworn, says that he resides at 510 West 157th street, in the city of New York, borough of Manhattan; that he desires to be accepted as surety upon the annexed recognizance for the appearance of George W. Beavers for trial in the United States circuit court for the eastern district of New York, and that for the purpose of inducing the United States to accept him as such surety, he makes the following statement, to wit:

That he is the owner in fee simple of all that certain lot, piece or parcel of land, with the buildings thereon, situate and being in the county of New York, and known as Nos. 49 and 51 East 131st street, county of New York, borough of Manhattan; that the value of said property is at least the sum of sixty thousand dollars ($60,000.); that the same are subject to mortgages in the aggregate amount of forty-two thousand dollars ($42,000.); that there are no other liens of any sort whatsoever thereon. That he is also the owner in fee simple of all that certain lot, pirce or parcel of land, with the buildings thereon, situate, lying and being in the county of New York and known

as No. 446 West One hundred and twenty-fourth street, New York city, borough of Manhattan, and that the value thereof is at
78 least the sum of thirty thousand dollars ($30,000.00), and that the same is subject to a mortgage of twenty-one thousand dollars ($21,000.00); that there are no other mortgages or liens of any nature whatsoever thereon. That there are no judgments against him in this city or elsewhere; that he is not surety upon any other recognizance, and that he is worth at least the sum of twenty thousand dollars over and above all his debts, liabilities and obligations.

JAMES R. BROWN.

Sworn to before me this 24th day of May, 1904.

GEO. B. ADAMS, *U. S. D. J.*

79 EXHIBIT XI.

MAY 27TH, 1904.

Messrs. Morgan & Seabury, 290 Broadway, New York.

GENTLEMEN: You will please take notice that in the case of the *United States vs. George W. Beavers* you are hereby required to produce the defendant before the circuit court of the United States in and for the eastern district of New York at the court-room of said court in the Federal building borough of Brooklyn, city of New York, N. Y., on Wednesday, the first of June, 1904, at ten o'clock in the forenoon of that day, for the purpose of pleading to the indictments heretofore found by the grand jury of this district against the said defendant.

Respectfully yours,

(Signed) WM. J. YOUNGS,
U. S. Attorney.

80 Exhibit 12 is the record of the proceedings had before the commissioner, and is included in the return to the writ of certiorari.

Endorsed: Petition. Filed June 30, 1904.

81 The President of the United States to the marshall of the United States for the eastern district of New York, Greeting:

We command you that you have the body of George W. Beavers by your imprisoned and detained as it is said, together with the time and cause of such imprisonment and detention by whatever name the said George W. Beavers shall be called or charged before a stated term of the district court of the United States for the eastern district of New York, to be held in the Post Office building in the city of New York, borough of Brooklyn, on the 30th day of June,

1904 at 9:30 o'clock in the forenoon, to do and receive what then and there shall be considered concerning said George W. Beavers, and have then and there this writ.

Witness: Honorable Edward B. Thomas, judge of the district court of the United States for the eastern district of New York, the 30 day of June, 1904.

[SEAL.] RICHARD P. MORLE, *Clerk.*

So ordered.

EDWARD B. THOMAS, *U. S. J.*

MORGAN & SEABURY,
Attorneys for Petitioner.

Office & P. O. address: 290 Broadway, borough of Manhattan, New York city.

Endorsed: Writ of *habeas corpus.* Filed July 1, 1904.
[Endorsed:] Writ of *habeas corpus.* Filed July 1, 1904.

82 The President of the United States to B. Lincoln Benedict, United States commissioner, duly authorized, of the district court of the United States for the eastern district of New York, Greeting:

We command you that you return before a stated term of the district court of the United States for the eastern district of New York, to be held in the Post Office building in the city of New York, borough of Brooklyn, on the 30th day of June, 1904, at 9:30 o'clock in the forenoon of that day, all proceedings had and taken before you against George W. Beavers, under and pursuant to a warrant issued by you on the 3rd day of June, 1904, upon a complaint purporting to have been made by Frank E. Little, an inspector of the Post Office Department of the United States, and to do and receive what shall then and there be considered concerning the said matters and have you then and there this writ.

Witness Honorable Edward B. Thomas, judge of the district court of the United States for the eastern district of New York, [SEAL.] the 30th day of June, 1904.

RICHARD P. MORLE, *Clerk.*

So ordered

EDWARD B. THOMAS, *U. S. J.*

MORGAN & SEABURY,
Attorneys for Petitioner.

Office & P. O. address, 290 Broadway, borough of Manhattan New York city.

Endorsed: Writ of certiorari. Filed July 1, 1904.
[Endorsed:] Writ of certiorari. Filed July 1, 1904.

83 United States District Court for the Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

Return to Writ of Habeas Corpus.

UNITED STATES OF AMERICA,
Eastern District of New York, } ss:

Charles J. Haubert, being duly sworn, deposes and says that he is United States marshal for the eastern district of New York; that upon the thirtieth day of June, 1904, a writ of *habeas corpus* has been served upon him directing him to have the body of one George W. Beavers, by him imprisoned and detained, at a stated term of the district court of the United States for the eastern district of New York on the thirtieth day of June, 1904, at 9:30 o'clock in the forenoon, together with the time and cause of such imprisonment and detention, and together with the said writ of *habeas corpus*.

Your deponent further certifies and says that the said George W. Beavers, who was produced by your deponent together with the said writ of *habeas corpus* in said court at the time specified in said writ, is in his custody under and by virtue of a warrant of commitment dated the twenty-ninth day of June, 1904, and signed by B. Lincoln Benedict, Esq., an United States commissioner in and
84 for the eastern district of New York, which said commitment, amoung other things, commanded this deponent as United States marshal aforesaid in the name and by the authority of the United States of America to take the said defendant into his custody and him safely keep until he shall be ordered by the district judge to be removed to the District of Columbia for trial or shall be discharged according to law; that by virtue of the said commitment hereinbefore recited this deponent took the said George W. Beavers into his custody upon the said twenty-ninth day of June, 1904, and since that time has detained him in such custody. Deponent refers to the original warrant of commitment and endorsement thereon, now in his possession, which he hereby makes a part of this return and a copy of which is hereto annexed and marked "Exhibit A."

CHARLES J. HAUBERT.

Sworn to before me this first day of July, 1904.

J. G. COCHRAN,
U. S. Commissioner, E. D. of New York.

UNITED STATES OF AMERICA,
Eastern District of New York, } ss:

Charles J. Haubert, being duly sworn, deposes and says that he is United States marshal for the eastern district of New York and the person who made the foregoing deposition, that he has read the same and knows the contents thereof and the same are true except as to those matters therein alleged to be stated on information and
85 belief, and as to those matters he believes it to be true.

CHARLES J. HAUBERT.

Sworn to before me this first day of July, 1904.

J. G. COCHRAN,
U. S. Commissioner, E. D. of New York.

86 EXHIBIT A.

Before B. L. Benedict, United States Commissioner for the Eastern District of New York.

THE UNITED STATES OF AMERICA }
vs.
GEORGE W. BEAVERS. }

The President of the United States to Charles J. Haubert, the marshal of the United States for the eastern district of New York, and to his deputies or any of them, Greeting:

Whereas, the above named defendant George W. Beavers has been arrested, and brought before me this day upon a warrant of arrest, charged upon oath with having committed an offence against the laws of the United States, in this, viz,: That at Washington in the District of Columbia on the 11th day of July, 1901, he being then and there an officer of the United States and an agent thereof in the employ of the Post Office Department did unlawfully receive and accept from one W. Scott Towers a valuable consideration that is to say a draft on the Fourth National Bank of New York City for the sum of $350 with intent that the decision and action of said Beavers should be influenced in a matter then pending or to be brought before him in his official capacity for consideration, as by complaint on file in my office may more fully, and at large appear,—and it appearing to me that there is probable cause to believe that the offence with which defendant is so charged has been com-
87 mitted, and the said defendant not having given sufficient bail as required by me, the said U. S. commissioner, in the sum of ten thousand dollars to appear for trial in the said District of Columbia,

Now therefore, you are hereby commanded in the name and by the authority of the United States of America, to take the said defendant into your custody and him safely keep, until he shall be ordered by the district judge to be removed to the District of Columbia for trial or shall be discharged according to law.

Witness my hand and seal this 29th day of June, 1904.

B. LINCOLN BENEDICT,
[SEAL.] *U. S. Commissioner.*

Endorsed: Return to writ of *habeas corpus*. Filed July 1, 1904.
[Endorsed:] Return to writ of *habeas corpus*. Filed July 1, 1904.

88 U. S. District Court, Eastern District of New York.

To the Honorable Edward B. Thomas, district judge:

The undersigned U. S. commissioner for the eastern district of New York respectfully represents as follows:

In obedience to a writ of *certiorari* issued out of the district court of the United States for the eastern district of New York on the 30th June 1904, and to me directed and by me received at 10 a. m. of said day, requiring me as United States commissioner to return to said court at a stated term to be held at 9:30 a. m. of said day, all proceedings had and taken before me as U. S. commissioner in the matter of a complaint against one George W. Beavers, as set forth in said writ of *certiorari*, which is hereto prefixed,

I, B. Lincoln Benedict, U. S. commissioner respectfully return to the court the following:

1. The original complaint referred to in said writ.

2. The original warrant of arrest issued thereupon, with endorsements thereon made by me, and the return of the marshal.

3. The original minutes of testimony and proceedings on the 1st and part of 2d days of examination had before me upon the said complaint, as taken down by me at the time.

3. Copy of minutes of testimony and proceedings on the 2d and subsequent days as taken down by a stenographer by consent of counsel. No original of said minutes is in my possession.

89 4. Copy of writ of commitment issued by me at final hearing, the original being in the hands of the U. S. marshal for execution and not yet returned to me.

And I certify that the said papers which are hereto annexed contain a record of all proceedings had and take- before me in the aforesaid matter.

All of which is respectfully submitted.

B. LINCOLN BENEDICT,
U. S. Commissioner.

Dated June 30, 1904.

90 (*Copy of Check.*)

Cash.

No. 582. NEW YORK, *July* 23, 1901.

The Central National Bank of the City of New York,

Pay to the order of W. Scott Towers one hundred and ten 00/100 dollars 110^{00}_{100}$

M. D. HELM.

(Endorsed:) W. Scott Towers

90½ Before Hon. B. Lincoln Benedict, U. S. Commissioner, Eastern District of New York.

In the Matter of the Complaint of THE UNITED STATES } vs. GEORGE W. BEAVERS. }

UNITED STATES OF AMERICA, *Eastern District of New York, County of Kings,* } *ss.:*

Frank E. Little, being duly sworn, deposes and says that he is an inspector of the Post Office Department of the United States, and further says, on information and belief, that on the sixth day of October, in the year of our Lord nineteen hundred, and from thence until the first day of July, in the year of our Lord nineteen hundred and one, George W. Beavers, late of the city of Washington, in the said District of Columbia, at Washington aforesaid, in the said District, was an officer of the said United States and a person acting for and on benalf of the said United States in an official capacity under and by virtue of the authority of a department of the Government thereof, that is to say, superintendent of salaries and allowances, in the office of the First Assistant Postmaster General of the said United States, in the Post-Office Department of the Government thereof, and during the period aforesaid did act as and perform the duties of such superintendent of salaries and allowances; that on the said first day
91 of July, in the year of our Lord nineteen hundred and one, and from thence until and on the twenty-fourth day of March, in the year of our Lord nineteen hundred and three, the said George W. Beavers was an officer of the said United States and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of a department of the Government thereof, that is to say, general superintendent of salaries and allowances, in the office of the said First Assistant Postmaster General of the said United States, in the Post-Office De-

partment of the Government thereof, and during the last-mentioned period did act as, and perform the duties of, such general superintendent; that by reason of his being such officer and person acting as aforesaid, under the law and the regulations theretofore and then pursuant to law prescribed and promulgated by the Postmaster-General of the said United States for the government of his department and the conduct of its officers and clerks, and in force during the said periods, he the said George W. Beavers was charged, amongst other things, with the consideration of orders and allowances for miscellaneous and incidental items of supplies, including furniture, and book-typewriting machines, called book-typewriters, for use in post-offices throughout the said United States, involving outlays and increases of expenditure of the moneys of the said United States appropriated by law for the service of the said Post-Office Department for the fiscal years ending June thirtieth, nineteen hundred and one,
June thirtieth, nineteen hundred and two, and June thirtieth
92 nineteen hundred and three, and also with procuring, in accordance with the methods provided by the said regulations and by law, from persons and corporations proposing to furnish the same, such supplies, furniture and book-typewriters for the use aforesaid, by open purchase or contract at the places and in the manner in which such supplies, furniture and book-typewriters were and are usually bought and sold between individuals, in case the public exigency did not require such purchases and contracts to be made by advertising for proposals respecting the same,—of the prescribing and promulgating of which said regulations he, the said George W. Beavers, during the periods aforesaid, there had notice; and that during the said periods, and by reason of his being and acting as such superintendent and general superintendent, it became and was the duty of the said George W. Beavers, when discharging the duties with which he was so charged as aforesaid, carefully to guard the interests of the said United States, to observe the laws thereof, and the regulations aforesaid, and to preserve those interests in considering and making allowances for and procuring such miscellaneous and incidental items of supplies and furniture as aforesaid, and by all reasonable means and in the manner provided by law and the regulations aforesaid to secure terms as favorable to the said United States as possible when making contracts with and securing from persons and corporations proposing to furnish such supplies, furniture and book-typewriters for the said Post-
Office Department and for the use aforesaid, involving
93 expenditures of the moneys appropriated as aforesaid, and by all reasonable and lawful means to obtain by purchase or contract such supplies and furniture, for that department, out of the same moneys, as cheaply as possible; and that because special trust and confidence were reposed in him by his superior officers the said Postmaster-General and First Assistant Postmaster-General, and by the persons for the time being acting as such superior officers, by reason of his being such officer and person as

aforesaid, it then and there also became and was the duty of the said George W. Beavers, under the law and the said regulations, faithfully and truthfully to advise his said superior officers, or the persons acting as such, of and concerning all the matters requiring their supervision and notice and pertaining to the discharge of his the said George W. Beavers's said duties, and to inform them truly and in good faith concerning all allowances, contracts, undertakings, orders, and purchases considered by him in the discharge of his said duties, and concerning all bills or accounts rendered against the said United States and the said Post-Office Department in connection with such allowances, contracts, undertakings, orders and purchases, and especially in connection with allowances, contracts, undertakings, orders and bills or accounts made, entered into and rendered in connection with the purchase of certain furniture and book-typewriters hereinafter mentioned; and that one W. Scott Towers, late of Washington aforesaid, during the periods aforesaid, was an agent of the Elliott & Hatch Book Type-
94 writer Company, a corporation theretofore organized under the laws of the State of New York, and then existing under that name, and engaged in the business of manufacturing and selling certain book-typewriting machines, called book-typewriters, and at divers times during the said first-mentioned period, under the circumstances hereinafter set forth, did, as such agent of the said corporation, sell and furnish a large number, to-wit, fourteen, of such book-typewriters to the said Post-Office Department, at the price of two hundred dollars each, that is to say, one book-typewriter each for the post-offices of the said United States at Columbia, South Carolina; East Liverpool, Ohio; Charleston, South Carolina; Helena, Montana; Rochester, New York; Kingston, New York, and Roanoke, Virginia, and seven book-typewriters for the post-office of the said United States at Boston, Massachusetts,—which said book-typewriters were so sold and furnished to the said Post-Office Department on divers days during the said first-mentioned period; and that during the said first-mentioned period, to-wit, on the said sixth day of October, in the year of our Lord nineteen hundred, the said George W. Beavers and W. Scott Towers did enter into an unlawful and corrupt agreement whereby the said W. Scott Towers, agent of the said corporation as aforesaid, undertook and promised on behalf of the said corporation to pay to him the said George W. Beavers, for the own personal use and benefit of him the said George W. Beavers, from time to time as the said corporation itself received payment therefor, and while he continued to be such officer and person acting in an official
95 capacity under and by virtue of the authority of the said Post-Office Department as aforesaid, the sum of twenty-five dollars out of each sum of two hundred dollars paid to the said corporation, out of the moneys appropriated as aforesaid, for purchasing the said book-typewriters for the said Post-Office Department; and that the said George W. Beavers afterwards, to wit, on the

eleventh day of July in the year of our Lord nineteen hundred and one, during the last mentioned period, while he the said George W. Beavers was still an officer of the said United States as aforesaid, and a person acting for and on behalf of the said United States in an official capacity as aforesaid, and in pursuance of the said unlawful and corrupt agreement, at Washington, aforesaid, in the said District of Columbia, unlawfully did receive from the said W. Scott Towers, agent of the said corporation, as aforesaid, a certain obligation for the payment of money, to wit, a draft dated that day, numbered 139946, drawn by the Citizens' National Bank of Washington City, in the said District of Columbia, upon the Fourth National Bank of New York City, New York, for the payment of the sum of three hundred and fifty dollars to the order of the said W. Scott Towers, and by the said W. Scott Towers endorsed in blank, and this with intent on the part of him the said George W. Beavers, to have his decision and action on a matter then pending and thereafter to be brought before him in his said official capacity and in his place of trust influenced thereby to the detriment of the said United States, that is to say, to have his decision and action
96 in the matter of then and thereafter making allowances for and procuring for the said Post-Office Department, in the manner aforesaid, from the said corporation, book-typewriters of the kind aforesaid, otherwise than in the manner in which such articles are usually bought and sold between individuals, and not as cheaply as possible, and at a price greatly in excess of the price at which the same articles could and would have been procured for the said Post-Office Department if he the said George W. Beavers had honestly discharged his said duties and not entered into and executed the said unlawful and corrupt agreement with the said W. Scott Towers as aforesaid, that is to say, twenty-five dollars in excess upon each of the said book-typewriters, and with intent on the part of him the said George W. Beavers to have his action in the matter of faithfully and truthfully advising his said superior officers, or the persons acting as such, of and concerning the discharge of his said duties, influenced thereby adversely to his true duty and to the interests of the said United States, in such a manner as to cause him to connive at and allow the fraud on the said United States involved in the said unlawful and corrupt agreement; all of which was against the peace of the United States of America, and their dignity, and contrary to the form of the statute of the said United States in such case made and provided, and all of which acts and facts and circumstances hereinbefore set forth are more particularly set forth and contained in an indictment against the said George W. Beavers duly
97 found by a grand jury in the supreme court of the District of Columbia holding a criminal court, for the April term, in the year of our Lord one thousand nine hundred and three, duly filed in open court in said court and District upon the fifth day of October nineteen hundred and three, an exemplified copy of which indictment is hereto annexed and marked Exhibit "A," and which is

made a part of this complaint and to which for more particularity reference is hereby made; that at the said April term of the said supreme court of the District of Columbia, the grand jurors for the United States of America, inquiring in and for the said District of Columbia, duly found the indictment hereinbefore referred to, charging the said George W. Beavers with the offence hereinbefore set forth, that is to say, with the same offence contained and set forth in said indictment, which indictment, as aforesaid, was duly filed in open court in said court and said District upon the said fifth day of October nineteen hundred and three, to which indictment reference has been heretofore and is hereby made and an exemplified copy of which is hereto attached and called Exhibit "A;" that after the filing of the said indictment and upon the third day of November in the year nineteen hundred and three, a bench warrant duly issued out of said supreme court of the District of Columbia, holding a criminal court, for the arrest of the said George W. Beavers, a duplicate of which original warrant is hereto attached, which is marked Exhibit "B."

Deponent further says that the said George W. Beavers has not been found within the said District of Columbia, and is not
98 now within the said District of Columbia, but is within the eastern district of New York, in the borough of Brooklyn, New York city, New York.

Deponent further says that the source of his information and the grounds of his belief as to the allegations hereinbefore stated to be alleged upon information and belief are the exemplified copy of said indictment hereinbefore referred to and attached hereto as Exhibit "A" and the duplicate original of the said bench warrant hereto attached and marked Exhibit "B."

Deponent further says that he is personally acquainted with the said George W. Beavers and knows that he is the person mentioned and described in said indictment and charged with the offence therein set forth.

FRANK E. LITTLE, *P. O. Insp'r.*

Subscribed and sworn to before me this first day of June, 1904.

B. LINCOLN BENEDICT,
U. S. Commissioner, Eastern District of New York.

99 EXHIBIT A.

Authentication.

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the said court, do hereby certify that the following copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said court.

Witness my hand and the seal of said court this 3d day
[SEAL.] of November, 1903.

J. R. YOUNG, *Clerk*,
By F. W. SMITH, *Ass't Clerk*.

I, Harry M. Clabaugh, chief justice of said court, do certify the foregoing attestation by John R. Young, clerk of the said court, to be in due form.

Witness my hand and seal this 3d day of November, 1903.

HARRY M. CLABAUGH, [SEAL.]
Chief Justice.

I, John R. Young, clerk of said court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

[SEAL.] Witness my hand and the seal of said court, this
100 3d day of November, 1903.

J. R. YOUNG, *Clerk*,
By F. W. SMITH, *Ass't Clerk*.

101 In the Supreme Court of the District of Columbia, Holding a Criminal Court, of the April Term, in the Year of Our Lord Nineteen Hundred and Three.

DISTRICT OF COLUMBIA, *act:*

The grand jurors for the United States of America, inquiring for the District of Columbia, upon their oath present, that on the sixth day of October, in the year of our Lord nineteen hundred, and from thence until the first day of July, in the year of our Lord nineteen hundred and one, George W. Beavers, late of the city of Washington, in the said District of Columbia, at Washington aforesaid, in the said District, was an officer of the said United States and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of a department of the Government thereof, that is to say, superintendent of salaries and allowances, in the office of the First Assistant Postmaster General of the said United States, in the Post-Office Department of the Government thereof, and during the period aforesaid did act as and perform the duties of such superintendent of salaries and allowances; that on the said first day of July, in the year of our Lord nineteen hundred and one, and from thence until and on the twenty-fourth day of March, in the year of our Lord nineteen hundred and three, the said George W. Beavers was an officer of the said United States and a person acting for and on behalf of the

said United States in an official capacity under and by
102 virtue of the authority of a department of the Government thereof, that is to say, general superintendent of salaries and allowances, in the office of the said First Assistant Postmaster General of the said United States, in the Post-Office Department of the Government thereof, and during the last-mentioned period did act as, and perform the duties of, such general superintendent; that by reason of his being such officer and person acting as aforesaid, under the law and the regulations theretofore and then pursuant to law prescribed and promulgated by the Postmaster General of the said United States for the government of his department and the conduct of its officers and clerks, and in force during the said periods, he the said George W. Beavers was charged, amongst other things, with the consideration of orders and allowances for miscellaneous and incidental items of supplies, including furniture, and book-typewriting machines, called book-typewriters, for use in post-offices throughout the said United States, involving outlays and increases of expenditure of the moneys of the said United States appropriated by law for the service of the said Post-Office Department for the fiscal years ending June thirtieth, nineteen hundred and one, June thirtieth, nineteen hundred and two, and June thirtieth nineteen hundred and three, and also with procuring, in accordance with the methods provided by the said regulations and by law, from persons and corporations proposing to furnish the same, such supplies, furniture and book-typewriters for the use aforesaid, by open purchase or contract at the places and in the manner in which such supplies, furniture and book-typewriters were
103 and are usually bought and sold between individuals, in case the public exigency did not require such purchases and contracts to be made by advertising for proposals respecting the same,—of the prescribing and promulgating of which said regulations, he the said George W. Beavers, during the periods aforesaid, there had notice; and that during the said periods, and by reason of his being and acting as such superintendent and general superintendent it became and was the duty of the said George W. Beavers, when discharging the duties with which he was so charged as aforesaid, carefully to guard the interests of the said United States, to observe the laws thereof, and the regulations aforesaid, and to preserve those interests in considering and making allowances for and procuring such miscellaneous and incidental items of supplies and furniture as aforesaid, and by all reasonable means and in the manner provided by law and the regulations aforesaid to secure terms as favorable to the said United States as possible when making contracts with and securing from persons and corporations proposing to furnish such supplies, furniture and book-typewriters for the said Post-Office Department and for the use aforesaid, involving expenditures of the moneys appropriated as aforesaid, and by all reasonable and lawful means to obtain by purchase or contract such supplies and furniture, for that department, out of the same moneys, as

cheaply as possible; and that because, as the grand jurors aforesaid, upon their oath aforesaid, charge the fact to be, special trust and confidence were reposed in him by his superior officers the said Postmaster-General and First Assistant
104 Postmaster-General, and by the persons for the time being acting as such superior officers, by reason of his being such officer and person as aforesaid, it then and there also became and was the duty of the said George W. Beavers, under the law and the said regulations, faithfully and truthfully to advise his said superior officers, or the persons acting as such, of and concerning all the matters requiring their supervision and notice and pertaining to the discharge of his the said George W. Beavers's said duties, and to inform them truly and in good faith concerning all allowances, contracts, undertakings, orders, and purchases considered by him in the discharge of his said duties, and concerning all bills or accounts rendered against the said United States and the said Post-Office Department in connection with such allowances, contracts, undertakings, orders and purchases, and especially in connection with allowances, contracts, undertakings, orders and bills or accounts made, entered into and rendered in connection with the purchase of certain furniture and book-typewriters hereinafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that one W. Scott Towers, late of Washington aforesaid, during the periods aforesaid, was an agent of the Elliott & Hatch Book Typewriter Company, a corporation theretofore organized under the laws of the State of New York, and then existing under that name, and engaged in the business of manufacturing and selling certain book-typewriting machines, called book-typewriters, and at divers times during the said first-mentioned period, under the circumstances hereinafter set forth, did, as such agent of the said corporation, sell
105 and furnish a large number, to wit, fourteen, of such book-typewriters to the said Post-Office Department, at the price of two hundred dollars each, that is to say, one book-typewriter each for the post-office of the said United States at Columbia, South Carolina; East Liverpool, Ohio; Charleston, South Carolina; Helena, Montana; Rochester, New York; Kingston, New York; and Roanoke, Virginia, and seven book-typewriters for the post-office of the said United States at Boston, Massachusetts,—which said book-typewriters were so sold and furnished to the said Post-Office Department on divers days during the said first-mentioned period.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said first-mentioned period, to wit, on the said sixth day of October, in the year of our Lord nineteen hundred, the said George W. Beavers and W. Scott Towers did enter into an unlawful and corrupt agreement whereby the said W. Scott Towers, agent of the said corporation as aforesaid, undertook and promised on behalf of the said corporation to pay to him the said George W. Beavers, for the own personal use and benefit of him the

said George W. Beavers, from time to time as the said corporation itself received payment therefor, and while he continued to be such officer and person acting in an official capacity under and by virtue of the authority of the said Post-Office Department as aforesaid, the sum of twenty-five dollars out of each sum of two hundred dollars paid to the said corporation, out of the moneys appropriated as aforesaid, for purchasing the said book-typewriters
106 for the said Post-Office Department; and that the said George W. Beavers afterwards, to wit, on the eleventh day of July in the year of our Lord nineteen hundred and one, during the last mentioned period, while he the said George W. Beavers was still an officer of the said United States as aforesaid, and a person acting for and on behalf of the said United States in an official capacity as aforesaid, and in pursuance of the said unlawful and corrupt agreement, at Washington, aforesaid, in the said District of Columbia, unlawfully did receive from the said W. Scott Towers, agent of the said corporation, as aforesaid, a certain obligation for the payment of money, to wit, a draft dated that day, numbered 139946, drawn by the Citizens' National Bank of Washington City, in the said District of Columbia, upon the Fourth National Bank of New York City, New York, for the payment of the sum of three hundred and fifty dollars to the order of the said W. Scott Towers, and by the said W. Scott Towers endorsed in blank, and this with intent on the part of him the said George W. Beavers, to have his decision and action on a matter then pending and thereafter to be brought before him in his said official capacity and in his place of trust influenced thereby to the detriment of the said United States, that is to say, to have his decision and action in the matter of then and thereafter making allowances for and procuring for the said Post-Office Department, in the manner aforesaid, from the said corporation, book-typewriters of the kind aforesaid, otherwise than in the manner in which such articles are usually bought and sold between individuals, and not as cheaply as possible,
107 and at a price greatly in excess of the price at which the same articles could and would have been procured for the said Post-Office Department if he the said George W. Beavers had honestly discharged his said duties and not entered into and executed the said unlawful and corrupt agreement with the said W. Scott Towers as aforesaid, that is to say, twenty-five dollars in excess upon each of the said book-typewriters,—and with intent on the part of him the said George W. Beavers to have his action in the matter of faithfully and truthfully advising his said superior officers, or the persons acting as such, of and concerning the discharge of his said duties, influenced thereby adversely to his true duty and to the interests of the said United States, in such a manner as to cause him to connive at and allow the fraud on the said United States involved in the said unlawful and corrupt agreement; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers, on the said eleventh day of July, in the year of our Lord nineteen hundred and one, at Washington aforesaid, in the said District of Columbia, so being general superintendent of salaries and allowances and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of the Post-Office Department of the Government thereof as in the first count of
108 this indictment set forth, and so having entered into the unlawful and corrupt agreement in that count mentioned, further in pursuance of the same unlawful and corrupt agreement, with the same several intents on his part set forth, in the said first count, and under the circumstances and conditions therein mentioned, unlawfully did receive from the said W. Scott Towers, agent of the corporation in the said first count mentioned, a certain contract, promise and gratuity, for the payment of money, that is to say, the draft for three hundred and fifty dollars, of the value of three hundred and fifty dollars, in the said first count of this indictment described; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

3. And the grand jurors aforesaid, upon their oath aforesaid do further present, that the said George W. Beavers, on the said eleventh day of July, in the year of our Lord nineteen hundred and one, at Washington aforesaid, in the said District of Columbia, so being general superintendent of salaries and allowances and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of the Post-Office Department of the Government thereof as in the first count of this indictment set forth, and so having entered into the unlawful and corrupt agreement in that count mentioned, further in pursuance of the same unlawful and corrupt agreement, with the same several intents on his part set forth in the said first count, and under the circumstances and conditions therein mentioned, unlawfully
109 did accept and receive from the said W. Scott Towers, agent of the corporation in the said first count mentioned, certain money, that is to say, the draft for three hundred and fifty dollars, of the value of three hundred and fifty dollars, in the said first count of this indictment described; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

(Signed) MORGAN H. BEACH,
United States Attorney.

Endorsed: No. 23954. United States *vs.* George W. Beavers. Violation of section 5501, R. S. U. S. Filed in open court, Oct. 5, 1903. Witnesses: H. J. Gensler, A. T. Brice, George D. Ashton, E. L. McKee, M. D. Helm, E. H. Schley, Charles Flint, Howard M. Jacobs, Mrs. H. J. Gensler, Jr. A true bill, A. M. McLachlen, foreman.

110 EXHIBIT B.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

THE UNITED STATES vs. GEORGE W. BEAVERS. } Criminal No. 23954. Indicted for Violation of Section 5501, R. S. U. S.

The President of the United States to the United States marshal for the District of Columbia, Greeting:

You are hereby commanded to take the defendant George W. Beavers, if to be found in your District, and him have before the criminal court for the said District of Columbia (immediately) to answer the United States touching the offense charged against him.

Hereof fail not, and have there then this writ, so indorsed as to show how you have executed it.

[L. S.] Witness, the Honorable Harry M. Clabaugh, chief justice of said court, the 3d day of November A. D. 1903.

J. R. YOUNG, *Clerk*,
By F. W. SMITH,
Assistant Clerk.

Ex. B, B. L. B. U. S. comm. June 13, 1904.

Endorsed: Bench warrant issued November 3, 1903.
[Endorsed:] Complaint Filed June 1, 1904.

111 Endorsed: Complaint, Wm. J. Youngs, U. S. dist. att'y. Filed June 6, 1904.

112 Before Hon. B. Lincoln Benedict, U. S. Commissioner, Eastern District of New York.

In the Matter of the Complaint of THE UNITED STATES vs. GEORGE W. BEAVERS.

UNITED STATES OF AMERICA,
Eastern District of New York, County of Kings, } ss:

Frank E. Little, being duly sworn, deposes and says that he is an inspector of the Post Office Department of the United States, and further says, on information and belief, that on the sixth day of October, in the year of our Lord nineteen hundred, and from thence until the first day of July, in the year of our Lord nineteen hundred and one, George W. Beavers, late of the city of Washington, in the

said District of Columbia, at Washington aforesaid, in the said District, was an officer of the said United States and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of a department of the Government thereof, that is to say, superintendent of salaries and allowances, in the office of the First Assistant Postmaster General of the said United States, in the Post-Office Department of the Government thereof, and during the period aforesaid did act as and perform the duties of such superintendent of salaries and allowances; that on the said
113 first day of July, in the year of our Lord nineteen hundred and one, and from thence until and on the twenty-fourth day of March, in the year of our Lord nineteen hundred and three the said George W. Beavers was an officer of the said United States and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of a department of the Government thereof, that is to say, general superintendent of salaries and allowances, in the office of the said First Assistant Postmaster General of the said United States, in the Post-Office Department of the Government thereof, and during the last-mentioned period did act as, and perform the duties of, such general superintendent; that by reason of his being such officer and person acting as aforesaid, under the law and the regulations theretofore and then pursuant to law prescribed and promulgated by the Postmaster-General of the said United States for the government of his department and the conduct of its officers and clerks, and in force during the said periods, he the said George W. Beavers was charged, amongst other things, with the consideration of orders and allowances for miscellaneous and incidental items of supplies, including furniture, and book-typewriting machines, called book-typewriters, for use in post-offices throughout the said United States, involving outlays and increases of expenditure of the moneys of the said United States appropriated by law for the service of the said Post-Office Department for the fiscal years ending June thirtieth, nineteen hundred and one, June thirtieth, nineteen hundred and two, and June thirtieth, nineteen hundred and three, and also
114 with procuring, in accordance with the methods provided by the said regulations and by law, from persons and corporations proposing to furnish the same, such supplies, furniture and book-typewriters for the use aforesaid, by open purchase or contract at the places and in the manner in which such supplies, furniture and book-typewriters were and are usually bought and sold between individuals, in case the public exigency did not require such purchases and contracts to be made by advertising for proposals respecting the same,—of the prescribing and promulgating of which said regulations he, the said George W. Beavers, during the periods aforesaid, there had notice; and that during the said periods, and by reason of his being and acting as such superintendent and general superintendent, it became and was the duty of the said George W. Beavers, when discharging the duties with which he was so

charged as aforesaid, carefully to guard the interests of the United States, to observe the laws thereof, and the regulations aforesaid, and to preserve those interests in considering and making allowances for and procuring such miscellaneous and incidental items of supplies and furniture as aforesaid, and by all reasonable means and in the manner provided by law and the regulations aforesaid to secure terms as favorable to the said United States as possible when making contracts with and securing from persons and corporations proposing to furnish such supplies, furniture and book-typewriters for the said Post-Office Department and for the use aforesaid, involving expenditures of the moneys appropriated as aforesaid, and by all reasonable and lawful means to obtain
115 by purchase or contract such supplies and furniture, for that department, out of the same moneys, as cheaply as possible; and that because, special trust and confidence were reposed in him by his superior officers the said Postmaster-General and First Assistant Postmaster-General, and by the persons for the time being acting as such superior officers, by reason of his being such officer and person as aforesaid, it then and there also became and was the duty of the said George W. Beavers, under the law and the said regulations, faithfully and truthfully to advise his said superior officers, or the persons acting as such, of and concerning all the matters requiring their supervision and notice and pertaining to the discharge of his the said George W. Beavers's said duties, and to inform them truly and in good faith concerning all allowances, contracts, undertakings, orders, and purchases considered by him in the discharge of his said duties, and concerning all bills or accounts rendered against the said United States and the said Post-Office Department in connection with such allowances, contracts, undertakings, orders and purchases, and especially in connection with allowances, contracts, undertakings, orders and bills or account made, entered into and rendered in connection with the purchase of certain furniture and book-typewriters hereinafter mentioned; and that one W. Scott Towers, late of Washington aforesaid, during the periods aforesaid, was an agent of the Elliott & Hatch Book Typewriter Company, a corporation theretofore organized under the laws of the State of New York, and then existing under that name, and engaged in the business of manu-
116 facturing and selling certain book-typewriting machines, called book-typewriters, and at divers times during the said first-mentioned period, under the circumstances hereinafter set forth, did, as such agent of the said corporation, sell and furnish a large number, to wit, fourteen, of such book-typewriters to the said Post-Office Department, at the price of two hundred dollars each, that is to say, one book-typewriter each for the post-offices of the said United States at Columbia, South Carolina; East Liverpool, Ohio; Charleston, South Carolina; Helena, Montana; Rochester, New York; Kingston, New York; and Roanoke, Virginia, and seven book-typewriters for the post office of the said United States at Boston, Massachusetts,—which said book-typewriters were so sold and fur-

nished to the said Post-Office Department on divers days during the said first-mentioned period; and that during the said first-mentioned period, to wit, on the said sixth day of October, in the year of our Lord nineteen hundred, the said George W. Beavers and W. Scott Towers did enter into an unlawful and corrupt agreement whereby the said W. Scott Towers, agent of the said corporation as aforesaid, undertook and promised on behalf of the said corporation to pay to him the said George W. Beavers, for the own personal use and benefit of him the said George W. Beavers, from time to time as the said corporation itself received payment therefor, and while he continued to be such officer and person acting in an official capacity under and by virtue of the authority of the said Post-Office Department as aforesaid, the sum of twenty-five dollars out of each sum of two hundred dollars paid to the said
117 corporation, out of the moneys appropriated as aforesaid, for purchasing the said book-typewriters for the said Post-Office Department; and the said George W. Beavers afterwards, to wit, on the eleventh day of July in the year of our Lord nineteen hundred and one, during the last mentioned period, while he the said George W. Beavers was still an officer of the said United States as aforesaid, and a person acting for and on behalf of the said United States in an official capacity as aforesaid, and in pursuance of the said unlawful and corrupt agreement, at Washington, aforesaid, in the said District of Columbia, unlawfully did receive from the said W. Scott Towers, agent of the said corporation, as aforesaid, a certain obligation for the payment of money, to wit, a draft dated that day, numbered 139946, drawn by the Citizens' National Bank of Washington City, in the said District of Columbia, upon the Fourth National Bank of New York City, New York, for the payment of the sum of three hundred and fifty dollars to the order of the said W. Scott Towers, and by the said W. Scott Towers endorsed in blank, and this with intent on the part of him the said George W. Beavers, to have his decision and action on a matter then pending and thereafter to be brought before him in his said official capacity and in his place of trust influenced thereby to the detriment of the said United States, that is to say, to have his decision and action in the matter of then and thereafter making allowances for and procuring for the said Post-Office Department, in the manner aforesaid, from the said corporation, book-typewriters of the kind aforesaid, otherwise than in the manner in
118 which such articles are usually bought and sold between individuals, and not as cheaply as possible, and at a price greatly in excess of the price at which the same articles could and would have been procured for the said Post-Office Department if he the said George W. Beavers had honestly discharged his said duties and not entered into and executed the said unlawful and corrupt agreement with the said W. Scott Towers as aforesaid, that is to say, twenty-five dollars in excess upon each of the said book typewriters,—and with intent on the part of him the said George W.

Beavers to have his action in the matter of faithfully and truthfully advising his said superior officers, or the persons acting as such, of and concerning the discharge of his said duties, influenced thereby adversely to his true duty and to the interests of the said United States, in such a manner as to cause him to connive at and allow the fraud on the said United States involved in the said unlawful and corrupt agreement; all of which was against the peace of the United States of America, and their dignity, and contrary to the form of the statute of the said United States in such case made and provided, and all of which acts and facts and circumstances hereinbefore set forth are more particularly set forth and contained in an indictment against the said George W. Beavers duly found by a grand jury in the supreme court of the District of Columbia, holding a criminal court, for the April term, in the year of our Lord one thousand nine hundred and three, duly filed in open court in said court and district upon the fifth day of October nineteen hundred and three, an exemplified copy of which
119 indictment is hereto annexed and marked Exhibit "A," and which is made a part of this complaint and to which for more particularity reference is hereby made; that at the said April term of the said supreme court of the District of Columbia, the grand jurors for the United States of America, inquiring in and for the said District of Columbia, duly found the indictment hereinbefore referred to, charging the said George W. Beavers with the offence hereinbefore set forth, that is to say, with the same offence contained and set forth in said indictment, which indictment, as aforesaid, was duly filed in open court in said court and said District upon the said fifth day of October nineteen hundred and three, to which indictment reference has been heretofore and is hereby made and an exemplified copy of which is hereto attached and called Exhibit "A;" that after the filing of the said indictment and upon the third day of November in the year nineteen hundred and three, a bench warrant duly issued out of said supreme court of the District of Columbia, holding a criminal court, for the arrest of the said George W. Beavers, a duplicate of which original warrant is hereto attached, which is marked Exhibit "B."

Deponent further says that the said George W. Beavers has not been found within the said District of Columbia, and is not now within the said District of Columbia, but is within the eastern district of New York, in the borough of Brooklyn, New York city, New York.

Deponent further says that the source of his information and the grounds of his belief as to the allegations hereinbefore stated
120 to be alleged upon information and belief are the exemplified copy of the said indictment hereinbefore referred to and attached hereto as Exhibit "A" and the duplicate original of the said bench warrant hereto attached and marked Exhibit "B."

Deponent further says that he is personally acquainted with the said George W. Beavers and knows that he is the person mentioned

and described in said indictment and charged with the offence therein set forth.

FRANK E. LITTLE,
P. O. Insp'r.

Subscribed and sworn to before me this first day of June, 1904.

B. LINCOLN BENEDICT,
U. S. Commissioner, Eastern District of New York.

121 The President of the United States of America to the marshal of the United States for the eastern district of New York and to his deputies or any or either of them:

Whereas, complaint on oath has been made to me, charging that George W. Beavers at Washington in the District of Columbia, on the 11th day of July in the year one thousand nine hundred and one, being then and there an officer and agent of the Government in the employ of and under the Post Office Department of the United States, did knowingly and unlawfully receive and accept an obligation for the payment of money from one W. Scott Towers who was then and there an agent of the Elliott and Hatch Book Type Writer Company, that is to say, a draft on the Fourth National Bank of New York City for the sum of $350.00 payable to the order of said Towers and by said Towers endorsed for payment, with intent that the action or decision of said Beavers in a matter then pending or to be brought before him for consideration in his official capacity should be influenced thereby, as by a copy of said complaint hereto annexed may more fully and at large appear, and contrary to the statutes of the United States in such behalf made and provided.

Now therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said George W. Beavers wherever he may be found and bring his body forthwith before me, or some judge or justice of the United
122 States, or other United States commissioner, that he may then and there be dealt with, for said offence according to law.

Given under my hand and seal, this 3d day of June in the year of our Lord one thousand nine hundred and four.

[SEAL.] B. LINCOLN BENEDICT,
United States Commissioner for the Eastern District of New York.

Endorsed: Warrant to apprehend. Filed June 8, 1904.

Endorsements on warrant.

The within named Geo. W. Beavers arrested and before the commissioner. Dated June 8, 1904. Ch. J. Haubert, U. S. marshal.

June 8, 1904.—Hearing on bail had. Hearing on charge adjourned to Monday June 13th, 1904, at 9.45 a. m. B. Lincoln Benedict, U. S. commissioner.

June 13th, 1904.—Hearing had, testimony taken. Def't remanded to custody of marshal. Hearing adjourned to Monday, June 20th, 1904, 10.30 a. m. Def't paroled in custody of counsel till Friday, June 17th, 10 a. m. B. Lincoln Benedict, U. S. comm.

June 17th, 1904.—Def't appears in pursuance of parole. No bail being tendered, def't is committed to custody of the marshal for examination. B. Lincoln Benedict, U. S. comm.

[Endorsed:] Warrant to apprehend. Filed June 8, 1904.

123 June 20th, 1904.—Hearing resumed. Further adj'd to Saturday, June 25th, 10.30 a. m. B. Lincoln Benedict, U. S. comm.

June 25th, 1904.—Hearing resumed and adj'd to June 28th, 1904.

June 28th, 1904.—Hearing resumed and adj'd to June 29th.

June 29th, 1904.—On final hearing defendant held for trial and committed in default of bail to await order of the district judge for removal. B. Lincoln Benedict, U. S. comm.

124 *Minutes Taken by U. S. Comm'r.*

WED., *June* 8, 1904.

U. S. *v.* Beavers
Mr. Youngs for U. S.
Morgan & Seabury for def't.
Marshal returns def't arrested
Def't asks adj. to Monday.
Deft's att'y asks to discharge def't without bail till the hearing.
Dist. att'y asks for $10,000. bail to be fixed. Def't opposes.
Hearing adj. to Monday 9.45 a. m. Defendant paroled in custody of counsel.
Bail fixed at $10,000.

125 JUNE 12TH

U. S. *vs.* Beavers
Mr. Youngs for U. S. & Mr. Chatfield.
Morgan & Seabury for def't.
Mr. Seabury produced def't and surrenders him to custody of marshal.
Mr. Seabury moves to dismiss, as arrest illegal & void and comm'r without jurisdiction. Denied.
Mr. Seabury asks to except.
Dist. att'y offers in evidence:
Exemplified copy of an indictment filed in supreme court, D. of C., Oct. 5, 1903, against one Geo. W. Beavers.

Objected to, as not stating facts sufficient to constitute an offence, as ambiguous & inconsistent, and not such as can constitute competent evidence.

Objection overruled. Indictment:—

Exhibit A.

Duplicate of warrant of arrest of Geo. W. Beavers, offered in evidence.

No objection as to form.

Objected to same as to indictment.

Objection overruled. Warrant marked Ex. B.

FRANK H. NEWCOMB called for U. S. & sworn.

Ex'd by Mr. CHATFIELD:

I reside in Brooklyn. Ass't P. M. in Brooklyn Jan'y 1, 1902; was not in employ of P. O. Department prior to Jan'y 1902 directly.

It is consented that Miss Wren, stenographer, may take
126 down the testimony offered, with the same force & effect as if taken down by the U. S. comm'r.

(See typewritten copy.)

Endorsed: Return of U. S. commissioner to certiorari Filed July 1, 1904.

[Endorsed:] Return of U. S. comm'r to certiorari. Filed July 1, 1904.

127 United States Commissioner's Court, Eastern District of New York.

UNITED STATES vs. GEORGE W. BEAVERS. } Before Hon. B. Lincoln Benedict, U. S. Commissioner.

BOROUGH OF BROOKLYN, *June* 13, 1904.

Appearances.

William J. Youngs, Esq., U. S. attorney, Thomas Ives Chatfield, Esq., ass't U. S. attorney for the Government.

Morgan & Seabury, Bankson T. Morgan, Esq., Wm. M. Seabury, Esq., for the defendant.

Mr. SEABURY: I presume that the record discloses that the accused is arraigned before you on the warrant issued by the supreme court of the District of Columbia.

The COMMISSIONER: No. It appears by the record that he is before me on a complaint issued in this district. The complaint shows what it is based on.

Mr. SEABURY: The record also shows, as I understand it, that the accused was arrested on Wednesday last.

The COMMISSIONER: The return of the marshal shows that.

Mr. SEABURY: May I see the return? (Examines.) As I understand the brief proceedings which we had before your honor when the accused was arraigned before you, the bail was fixed at $10,000.

128 The COMMISSIONER: No bail was demanded or given.

Mr. SEABURY: The district attorney asked for $10,000. and I opposed the application. The accused is now before you, and I now surrender him to the custody of the marshal. Will you enter a note that he is now in the custody of the marshal and desires now to have bail fixed?

The COMMISSIONER: He was supposed to be in your custody.

Mr. SEABURY: It was not so arranged.

The COMMISSIONER: I noted that he was paroled in the custody of his counsel.

Mr. SEABURY: I desire to move to dismiss the proceedings before you on the ground that the arrest made of the accused was illegal and void, that he is not now before you under any proper process, and that you are without jurisdiction to maintain this proceeding.

The COMMISSIONER: Denied.

Mr. SEABURY: I except.

The COMMISSIONER: No exception allowed to ruling of the commissioner.

Mr. SEABURY: Does your honor refuse the exception?

The COMMISSIONER: You can take all you want, but there is no appeal.

129 Mr. SEABURY: I appreciate that, but I prefer the exception, if you will permit it to go on the record.

The COMMISSIONER: I suppose, Mr. Seabury, there is no question raised as to identity.

Mr. SEABURY: Yes, I prefer to have it established by proof.

Mr. CHATFIELD: Mr. Commissioner, it seems to me that there can be no question raised, and it is not necessary to go into proof, as the defendant is the same person who is under arraignment in the eastern district of New York on another charge involving the same question of identity and there already established.

Mr. SEABURY: I prefer to have it established.

Mr. CHATFIELD: The Government will offer in evidence exemplified copy of the indictment filed in the supreme court of the District of Columbia on the 5th day of October, 1903, charging one George W. Beavers with a crime against the United States as charged in the indictment.

Mr. SEABURY: I desire to object, Mr. Commissioner, to the receipt in evidence of the indictment, upon the ground that the indictment fails to state facts sufficient to constitute a crime; that it is so ambiguous and inconsistent as to render it worthless as proof of any of the alleged facts set forth therein; and because it is not such an indict-

ment as to constitute competent evidence against the accused
130 in this proceeding.

Mr. CHATFIELD: On the assumption that the defendant is an individual and not the person charged?

Mr. SEABURY: It does not necessarily follow.

Mr. CHATFIELD: I claim, your honor, that the identity has been established.

The COMMISSIONER: Well, I overrule the objections.

Mr. Seabury excepts.

The commissioner marks the exemplified copy of indictment, previously offered by the Government, Exhibit A.

Mr. CHATFIELD: I offer, on behalf of the Government, a duplicate of the original warrant for the arrest of one George W. Beavers, the person charged with a crime in Exhibit A.

Mr. SEABURY: No objection on the form of the paper. I object to the paper offered on each of the grounds already urged with reference to the indictment.

Overruled. Exception.

131 FRANK H. NEWCOMB, called as a witness by the Government, was duly sworn, and testified as follows:

Direct examination by Mr. CHATFIELD:

Q. Mr. Newcomb, do you reside in Brooklyn?
A. Yes sir.
Q. And what is your occupation?
A. Assistant postmaster.
Q. Of the Brooklyn postoffice?
A. Yes sir.
Q. When did you first become assistant postmaster?
A. First day of January, 1902.

Mr. SEABURY: I object to counsel communicating with the witness when the witness is on the stand. It is distinctly improper.

Q. Were you in the employment of the Post Office Department prior to January, 1902?
A. Not directly. I was in charge of a substation, under the jurisdiction of the postmaster, for twelve years.

Mr. CHATFIELD: Have you any objection, Mr. Seabury, and are you willing to have it entered on the record, that the stenographer take the questions and answers in the proceedings in shorthand, and that shorthand record be used by the commissioner?

Mr. SEABURY: I desire that.

Mr. CHATFIELD: Then I ask, Mr. Commissioner, that you enter that on the record.

The COMMISSIONER: It is consented that Miss Amy Wren
132 shall take down the testimony offered, with the same effect as if taken down by the commissioner.

Q. Just what was your connection with the Post Office Department prior to January 1, 1902?
A. I was known as clerk in charge of station # 3.
Q. And you were paid by the Government?
A. Paid by the postmaster.
Q. Out of the Government fund?
A. Yes sir.
Q. How long did you hold that position?
A. About twelve years.
Q. And during that twelve years, did you ever have any occasion to go to the Post Office Department at Washington?
A. Only just prior to taking this office.
Q. When was that?
A. In December, 1901.

Cross-examination by Mr. SEABURY:

Q. Do you know anything about a certain indictment found against George W. Beavers?
A. I do not know.

Objected to as incompetent, irrelevant and immaterial.
The COMMISSIONER: He says he don't know.

Q. Have you any knowledge of any of the facts set forth in that indictment?
A. No sir, I have not seen the indictment.

Objected to on the ground that the question is so indefinite that it is incompetent.

Q. Do you know any facts with reference to the charge against one George W. Beavers, charging him with having received certain money, $350., on the 11th day of July, 1901, from W. Scott
133 Towers, for the purpose of having his official decision influenced with reference to the Elliott-Hatch typewriting machines?

Objected to as immaterial, irrelevant and incompetent, and on the ground that it is not cross examination.
The COMMISSIONER: He may ask him if he knows.
Mr. CHATFIELD: Not on his cross-examination on other questions. What is the use of making the record?

Q. (Question read.)
A. I do not.

Mr. MORGAN: I understand that was objected to and the objection overruled, and the question admitted.

134 FRANK E. LITTLE, called as a witness by the Government, was duly sworn, and testified as follows:

Direct examination by Mr. CHATFIELD:

Q. What is your occupation?

A. Post office inspector.

Q. And how long have you been post office inspector for the United States Government?

A. 14 years.

Q. How long have you known the defendant?

A. Since the summer of 1893.

Q. By what name have you known him?

A. George W. Beavers.

Q. And since the year 1893, will you state where and what he was engaged in doing at the time you saw him?

A. When I first met him in 1893, he was post office inspector, attached to the New York division, with headquarters at the post office building, New York. Subsequent to that——

Q. About when?

A. In 1897, I think, if I recall the exact date, I met him in Washington as chief of the salary and allowance division in the office of the First Assistant Postmaster General, where he remained under various titles until the spring of 1903.

Q. Now, you will swear, then, that the defendant here present, under the name of George W. Beavers, from the year 1897 until the year 1903, held the office in the Post Office Department of the United States Government at Washington, of the person in charge of the salary and allowance division of that Post Office Department?

A. Yes.

135 Q. And now, can you tell what the titles were, and the exact way he was called?

A. When he was first appointed, the office was known as chief of the salary and allowance division. It was afterwards changed to superintendent, and then to general superintendent. The dates of these acts I have not in mind.

Q. About when did they occur?

A. I would not undertake to give the date, because I have not the exact data of that.

Q. Under what title was Mr. Beavers acting in the year 1901?

A. My recollection is that in the year 1901 up to the first of July, he held the title of superintendent, and then his title was changed to general superintendent.

Q. Under whichever name he acted, this same individual as the defendant here present performed the duties of that office?

A. He was head of the salary and allowance division.

Q. You are the person who made the complaint the first day of June, 1904?

A. The complaint in this case.

Q. And in that complaint you have sworn that you are person-

ally acquainted with the said George W. Beavers, referred to in an indictment thereto annexed, and that he is the person mentioned and described in that indictment, charged with the offence therein set forth; you made that affidavit of your own knowledge?

A. Yes sir.

Q. And the George W. Beavers now present as the defendant is the person who you swore was the accused in this indictment when you made that complaint?

A. That is correct.

136 Q. He was in Brooklyn at the time you made it?

A. He was.

Q. And not in the District of Columbia?

A. No sir.

Cross examination by Mr. SEABURY:

Q. When you say that you made this affidavit from your own knowledge, you mean as to all the facts you made it on your own knowledge?

A. I mean that it was based on the indictment.

Q. You limit your personal knowledge to the identification of the accused?

Objected to. The complaint shows for itself. If he wishes to go into how much he knows on something he says on information and belief, that is another matter.

Mr. SEABURY: I desire to understand the scope of the question.

The COMMISSIONER: The question was pretty definite, and the answer also, I thought.

Q. (Question read)

A. Acting so far as that is concerned, yes. You asked about the facts stated in the complaint.

The COMMISSIONER: No, he changed the question.

Q. I asked you whether you claimed to have any personal knowledge of the facts?

The COMMISSIONER: Do you ask that now, Mr. Seabury?

Mr. SEABURY: Yes sir.

Mr. CHATFIELD: Objected to as immaterial.

Excluded. Exception.

137 Q. What source of knowledge have you as to any of the facts set forth in the indictment annexed to your complaint?

A. I have already answered.

Q. What is the answer?

A. The facts, as they relate to the matter of the Elliott & Hatch typewriter, were obtained from the indictment.

Q. And you have no other knowledge than what you have received from the indictment as to those facts; is that correct?

A. It is not correct.

Q. Then, what does your answer mean?

Objected to as immaterial, irrelevant and incompetent.

The COMMISSIONER: I think his meaning is plain.

Mr. SEABURY: I want it to appear that this removal proceeding is not on any evidence except the certified copy of the indictment.

The COMMISSIONER: Wait until the evidence is closed.

Mr. SEABURY: He has finished with this witness, and I want to cross examine to make it apparent. Will your honor direct the witness to answer the question?

The COMMISSIONER: No.

Exception.

Q. How long have you known Mr. Beavers?

A. Since 1893.

Q. Do you know Mr. Scott Towers?

A. I do.

Q. How long have you known Mr. Towers?

137½ A. I should say since 1897.

Q. Have you ever seen Mr. Towers and Mr. Beavers together?

A. I have.

Objected to as irrelevant and not cross-examination.

The COMMISSIONER: The only evidence given by the witness is on the question of identity.

Mr. SEABURY: I claim the right to examine this witness as to the facts that tend to disclose probable cause or want of probable cause of the accused's guilt.

The COMMISSIONER: I do not think you can.

Mr. SEABURY: I call your honor's attention to the section of the State Code of Criminal Procedure which covers this proceeding, which says that the prosecution can call witnesses, and then the witnesses can be cross examined. I now make the request that the prosecution offer Mr. Little for the purposes of cross examination. I think it is section 195 of the Code of Criminal Procedure.

The COMMISSIONER: I think that only refers to witnesses called to prove an offense.

Mr. CHATFIELD: Besides that, I have subjected Mr. Little to cross examination.

Mr. SEABURY: I have not been permitted to continue my cross examination. I request your honor to request the prosecution to submit the witness Little as to the facts.

138 The COMMISSIONER: Call him as your witness.

Mr. SEABURY: Will you so instruct the prosecution to submit him for the purposes of cross-examination?

The COMMISSIONER: No.

Exception.

Q. Did you ever overhear any conversation between Mr. Towers and Mr. Beavers?

Objected to. Objection sustained. Exception.

Q. When was the last time that you saw Mr. Towers and Mr. Beavers together?

Objected to. Objection sustained. Exception.

Q. Did you ever see Mr. Towers and Mr. Beavers together in the city of Washington, District of Columbia?

Objected to. Objection sustained. Exception.

Q. Do you know any of the officers of the Elliott & Hatch Book Typewriter Co.?

Objected to. Objection sustained. Exception.

Mr. SEABURY: Do I understand your honor to hold that I am not to examine this witness on any questions under the facts set forth in this indictment?

The COMMISSIONER: I understand you cannot. In the case of The United States *v.* Beavers, the supreme court held that a certified copy of the indictment was *prima facie* evidence on which to base removal proceedings.

Mr. CHATFIELD: And that the sufficiency of the indictment could not be attacked.

139 Mr. SEABURY: I do not intend to attack the sufficiency with this witness. All I desire is your honor's ruling.

The COMMISSIONER: I have made my ruling.

Mr. SEABURY: I ask your honor to permit me to question the witness on the facts set forth in the indictment.

The COMMISSIONER: I have not stopped you. I think it has gone far enough.

Mr. SEABURY: If your honor will rule upon the matter.

The COMMISSIONER: I do not see why my ruling is not sufficient.

Mr. SEABURY: Then I will be obliged to proceed with the examination.

Q. Do you know any of the officers of the Elliott & Hatch Book Typewriter Co.?

Objected to. Objection sustained. Exception.

Q. Did you see Mr. Beavers on the 6th day of October, 1900?

Objected to as incompetent, irrelevant and immaterial and not cross examination.

Objection sustained. Exception.

Q. Did you see Mr. Towers on the 6th day of October, 1900?

Mr. CHATFIELD: Same objection. I shall object to all of this line of questioning, so long as Mr. Little is our witness, so long as

140 the case is with us. If they desire to call Mr. Little as their witness, and have your honor rule on the questions as their

witness, that is another matter; but as the matter stands, I think one ruling on this testimony is sufficient.

Q. Have you any knowledge of any alleged agreement made between Mr. Towers and Mr. Beavers on the 6th of October, 1900, whereby Mr. Beavers was to receive sums of money with reference to having his official conduct influenced with reference to the Elliott & Hatch book typewriting machines?

Objected to. Objection sustained.
Exception.

Q. Have you any knowledge with reference as to whether on the 11th day of July, 1901, or any other day George W. Beavers received any money from W. Scott Towers?

Objected to. Objection sustained.
Exception.

141 Mr. SEABURY: Before the prosecution proceeds with its case, Mr. Commissioner, and rests it finally, I desire to inform you that there is present in this room Mr. Charles Flint, Mr. Howard M. Jacobs and Mr. Henry Gensler, three witnesses whose names are endorsed on the indictment as having given testimony before the grand jury which found this indictment which is the basis of this proceeding, and I demand that the prosecution call those witnesses to the stand, and subject them to the crossexamination of the defendant.

Mr. CHATFIELD: What is the commissioner's direction as to that request?

Mr. SEABURY: I asked you to direct the prosecution to place upon the stand these three witnesses now before your honor in this proceeding, and subject them to the defendant for the purposes of cross-examination.

The COMMISSIONER: I do not think it is within the power of the commissioner to direct the district attorney what witnesses he shall produce.

Exception.

Mr. CHATFIELD: That is all the evidence at present.

Mr. SEABURY: Do I understand the prosecution to rest?

Mr. CHATFIELD: Unless we should be compelled by some other circumstances to reopen our case, we rest. And upon our

142 case, I ask that the defendant be held to answer this charge in the District of Columbia.

The COMMISSIONER: You ask that he be held by me.

Mr. CHATFIELD: By you, on the charge that is before you, for such action as may be proper under section 1014.

The COMMISSIONER: The court orders the defendant removed, not the commissioner.

Government rests.

Mr. SEABURY: I desire to move to dismiss the proceedings instituted by the prosecution, upon each of the grounds already urged,

and upon the further grounds—(1) that there is no evidence before the commissioner upon which he can sustain a finding of probable cause; (2) that there is not sufficient evidence before the commissioner to sustain a finding of probable cause; (3) because of the refusal on the part of the prosecution to submit, and because of the refusal of the learned commissioner to direct the prosecution to submit the witnesses shown to be within the county where this proceeding is held and now before the commissioner, who are presumed to have knowledge of the facts in this proceeding, to the defendant for the purpose of cross-examination.

Denied. Exception.

143 HENRY J. GENSLER, called as a witness by the defendant, was duly sworn, and testified as follows:

Direct examination by Mr. SEABURY:

Q. What is your profession?

A. Stenographer.

Q. Are you official stenographer of the United States Senate?

A. One of them.

Q. How long have you been such?

A. 38 years.

Q. Have you at any time been connected with the Elliott & Hatch Book Typewriter Co.?

A. Yes sir.

Q. When were you first connected with the company?

A. August, 1897.

Q. In what capacity were you connected with the company at that time?

A. As agent in the District of Columbia.

Q. Were you the local agent of the company in the District of Columbia at that time?

A. Yes sir.

Q. And as such, what were some of your duties with reference to the sale of the Elliott & Hatch book typewriter?

Objected to on the ground that it is immaterial.

The COMMISSIONER: It is, but he may ask it.

Mr. Chatfield objects to all the testimony.

The COMMISSIONER: It is taken subject to your objection.

A. My duties were——

Mr. CHATFIELD: I would like to question the witness as to his qualifications.

Mr. Seabury objects.

144 The COMMISSIONER: He says he was an agent, and now he is asking him what he did.

Mr. CHATFIELD: Objected to, as his having been a witness before the grand jury.

Mr. SEABURY: Merely because the witness was so unfortunate or fortunate as to have been a witness before the grand jury, is that the same as being a convicted felon? Is he to be forever debarred from testifying because he was a witness before the grand jury? I have not asked the witness any question about his being before the grand jury.

A. My duties were to sell machines to the different departments and to solicit trade in Virginia and Maryland.

Q. That was your entire territory?

A. Yes sir.

Q. That is to say, the city of Washington, Maryland and Virginia?

A. Yes sir.

Q. During 1897, Mr. Gensler, was there any other book-type-writing machine on the market?

A. There was one machine, called the Fisher machine. They had a local agent in Washington.

Q. Was the Fisher machine similar in all respects to the Elliott & Hatch machine?

A. No sir.

Q. Which machine, in your opinion, was the superior machine?

A. The Elliott & Hatch.

Q. Was it far superior to the Fisher machine in your opinion?

Objected to.

The COMMISSIONER: It is preliminary.

A. I thought it was.

145 Q. Were there substantial matters in which the Elliott & Hatch was superior in workmanship etc.?

A. Yes sir.

Q. You have had a large experience with typewriters?

A. Yes sir.

Q. And you consider yourself competent to pass upon the merits?

A. Yes sir.

Q. At what price was it customary for the Elliott & Hatch Co. to sell its machines to the trade?

A. I think they had three different machines. One machine, I think, was sold for $150, the small typewriter, and the next size at $175, and the other size, the third size, which covered 21 inches, I think, of paper, at $200.

Q. And was this $200. machine No. 3?

A. I do not know exactly the number.

Q. Was it designated in any special way?

A. I think it was. It was so designated on the pamphlet. I forget exactly how it ran.

Mr. CHATFIELD: I would like to have the witness answer what he knows.

Mr. SEABURY: If you will object, Mr. Chatfield.

Mr. CHATFIELD: I have objected, frequently. I object on the ground that it is incompetent.

Objection sustained. Exception.

A. There were three sizes.

Q. You say, as I understand you, that the usual price of that machine that you describe was $200?

A. Yes sir.

146 Q. And the machine was sold at that price to everybody?

A. Yes, sir.

Q. Was that the machine which was sold to the Government?

A. Yes, sir.

Q. And were there several of these machines sold to the Government?

A. Yes, sir.

Q. Do you recall when the machines were first introduced to the Government?

Mr. CHATFIELD: Not what somebody told you.

A. Some time in 1898.

Q. Do you know of your own knowledge by whom they were first introduced?

A. I introduced some of these machines. I sold some machines to the Treasury Department, to the State Department, to the Department of Justice, to the Navy Department and to the Post Office Department.

Q. Prior to their being installed in the Post Office Department, were a number of these same machines installed in other departments of the Government?

A. Yes, sir.

Q. In what departments had they already been installed?

A. I think in the Department of Justice. You see, I have not got any dates with me.

Mr. YOUNGS: I object to counsel instructing the witness; the witness is plainly trying to answer the question.

The COMMISSIONER: I have heard no instruction.

Mr. YOUNGS: He is not answering a single question. When he is asked a question which requires "yes" or "no" for an answer, he goes off into something else.

147 Mr. SEABURY: I submit the witness is doing the best he can.

The COMMISSIONER: Go on.

Mr. CHATFIELD: I object to his stating what he thinks.

Q. How long were you connected with the Elliott & Hatch Book Typewriter Co.?

A. August 1897 to December 1899, when I severed my official connection with the company.

Q. What was the last date?

A. December, 1899.

Q. Do you know, Mr. Gensler, at what price the departments of the Government you have mentioned purchased these machines?

A. Yes sir.

Q. At what price did they purchase them?

A. $175 for the small book typewriter, and $200 for the large book typewriter.

Q. Do you know of any large book typewriter that you have referred to being sold for less than $200?

A. No sir.

Q. Either to the departments of the Government or to the trade in general?

A. Not that I remember.

Q. Do you recall whether or not a certain corporation at one time offered to purchase a large number of those machines at a price less than $200?

Objected to.

The COMMISSIONER: He may answer yes or no, if he knows.

A. I do not know of my own knowledge.

Q. Do you know Mr. Beavers?

A. Yes sir.

148 Q. How long have you known Mr. Beavers?

A. I have known him from some time in 1898, but I do not remember the exact month when I first knew him.

Q. You also know Mr. Towers, do you not?

A. I do.

Q. Have you any knowledge of any agreement alleged to have been made between Mr. Towers and Mr. Beavers on the 6th day of October, 1900, relating to Mr. Beavers's official action with regard to the Elliott & Hatch book typewriter?

A. No sir.

Q. You have never heard of any such arrangement?

A. No sir.

Q. In your capacity as an employé of the Elliott & Hatch Book Typewriter Co., you had charge of all the trade in the locality of the District of Columbia?

A. Yes, sir.

By Mr. YOUNGS:

Q. In the year 1900?

A. Did you say 1900?

By Mr. SEABURY:

Q. No, during your employment.

Mr. YOUNGS: I said during 1900.

A. Just supervising.

Q. Were you familiar with the contracts placed by the Elliott &

Hatch Book Typewriter Co. in the year 1900 in the city of Washington?

A. No sir.

Q. Are you familiar with the amount of work they did during that period?

A. Yes, to some extent.

Q. If they had secured any contracts from the Government, you would naturally have known it?

A. Yes, sir.

Objected to.

The COMMISSIONER: He has testified that he had left their employ.

149 Q. Did you say that December 19th you left their employ?

A. On December 30th, I think it was, I severed my official connection with the book typewriter, but I did have a supervisory capacity, giving my son advice whenever I could.

Q. Was your son in 1899 employed by the Elliott & Hatch Book Typewriter Co.?

A. He was employed by me.

Q. What was your connection with the company prior to 1899?

A. Simply as local agent.

Q. You were then in the employ, or connected in business with the Elliott & Hatch Book Typewriter Co.?

A. I was employed by them on commissions.

Q. How long did your arrangement last after 1899?

A. After 1899 I received commissions on whatever machines had been placed up to 1900. Some of them had not been paid for.

Q. How long did you remain the local agent of the Elliott & Hatch Book Typewriter Co.?

A. Up to December, 1899.

Q. I understand you to say that you worked on a commission basis.

A. I shall have to make that clearer. There had been a number of machines placed in the Post-Office that had not been paid for up to that time, and when I severed my connection with the company, I made arrangements with them that whatever commissions were due on those machines I should receive them, and whatever other orders came in after 1900, my son was to get the commissions on those. I simply obtained the commissions to pay my expenses.

150 Q. You simply had a supervision over the contracts to see what had come in?

A. Over the sales.

Q. Were you familiar with what sales were made during the year 1900 in Washington by the Elliott & Hatch Book Typewriter Co.?

A. Yes sir.

Q. And if any sales were made to the Government, you would know about it, would you not?

A. Yes sir.

Q. Prior to October 6, 1900, who was it that sold machines to the United States Government, Post Office Department?

A. That was 1900, up to October?

Q. Yes.

A. My son.

Q. From the first of January, 1900?

A. Yes sir, whatever orders were received for machines, new orders, after January, 1900, my son had control of.

Q. And were you familiar with what orders were placed at that time?

A. I did know at that time, but I do not remember now.

Q. You have testified, as I understand you, that you know of no arrangement between Mr. Beavers and Mr. Towers, whereby Mr. Beavers was to receive money for influencing his conduct with reference to the Elliott & Hatch Book Typewriting Co.?

A. That is correct, I do not know anything about it.

Q. If such an arrangement were made, by whose authority would it have been made?

Objected to.

The COMMISSIONER: He is not an officer of the company.

Exception.

151 Q. Do you know anything with reference to the alleged receipt of $350 by George W. Beavers on the 11th day of July, 1901?

A. No sir, I was on my vacation up in the Adirondacks at that time.

Q. And you do not know whether or not he received any such sum of money?

A. No sir.

Q. Do you know of your own knowledge if there was any matter then pending before him relating to the Elliott & Hatch Book Typewriting Co. or its machines, on July 11, 1901?

Mr. CHATFIELD: Answer "Yes" or "No."

A. I do not recall it at this moment if there was.

Q. You do not know one way or the other?

A. No sir, I do not.

Cross-examination by Mr. CHATFIELD:

Q. Do you know the defendant George W. Beavers?

A. Yes sir.

Q. Did you ever see him in Washington?

A. I saw Mr. Beavers perhaps ten or a dozen times during the whole time I was connected with the Elliott & Hatch Typewriter Co.

Q. Answer the question.

A. In Washington.

Q. Where?

A. In Washington.
Q. On top of the Washington monument or on the Capitol steps?
A. Neither place.
Q. Where?
A. Sometimes on the street, and I have seen him in his office.
Q. Where?
A. At the Post Office Department.
Q. In what division?
A. Salary and allowance division.
152 Q. And he was in charge?

Mr. SEABURY: I object. We did not submit this witness for the purpose of showing that. I confined my questions very strictly. He could have called him in the first instance for the purpose of establishing identity, if he desired to do so. It is clearly beyond the true scope of the examination.
Overruled. Exception.

Q. My question was whether Mr. Beavers was performing the duties of the person in charge of that division.
A. Yes sir.
Q. And in answer to Mr. Seabury's question as to Mr. Beavers and Mr. Towers having had some transactions, were you referring to this defendant and the same person who was in charge of the salary and allowance division in Washington?
A. Yes sir.

By Mr. SEABURY:

Q. Have you any knowledge of any alleged agreement made between Mr. Towers and Mr. Beavers?

Mr. CHATFIELD: I said when he answered your question about an alleged agreement, he was referring to him.

153 CHARLES FLINT, called as a witness by the defendant, was duly sworn and testified as follows:

Direct examination by Mr. SEABURY:

Mr. YOUNGS: I would like to ask Mr. Flint one question before Mr. Seabury examines him.
Mr. SEABURY: I prefer to have the examination proceed in its regular course and have Col. Youngs ask his questions in the cross-examination.
Mr. YOUNGS: If it hereafter appears that Mr. Flint appeared as a witness before the grand jury, then in that event we object to any testimony, and ask to have it stricken out.

Q. What is your business?
A. I am assistant treasurer and assistant secretary of the Elliott-Fisher Co. of New York.

Q. Is the Elliott-Fisher Co. of New York successor to the Elliott & Hatch Book Typewriter Co.?

A. The Elliott-Fisher Co. was the consolidation of five companies among which was the Elliott & Hatch.

Q. And how long have you been assistant secretary of the Elliott-Fisher Co.?

A. Since its organization, 1903.

Q. Prior to March, 1903, what position did you occupy in the company?

A. I was connected with the Elliott & Hatch.

Q. In what capacity?

A. As assistant to the manager, acting as assistant treasurer.

Q. How long did you keep that position?

154 A. I began my employment in February, 1901.

Q. And continued to what time?

A. March, 1903, when the company was consolidated.

Q. Prior to 1901, did you have any connection with the Elliott & Hatch Book Typewriter Co.?

A. No sir.

(Mr. Flint leaves stand, to allow Mr. Gensler to be recalled.)

Mr. GENSLER recalled by Mr. Chatfield.

Cross-examination by Mr. CHATFIELD:

Q. I meant to ask you if you are the same H. J. Gensler who appeared as a witness before the grand jury of the District of Columbia in the summer of 1903?

Mr. SEABURY: I object to that on the ground that it is immaterial, irrelevant and incompetent.

The COMMISSIONER: How is that material? It makes no difference whether he appeared there or not.

Mr. CHATFIELD: For the purpose of identity. I wish, of course, to make it the basis of an objection, before I get through. I have a right to ask him who he is, in order to show the inadmissibility of the testimony.

Mr. SEABURY: Objected to as incompetent, irrelevant and immaterial. He has asked him to specify something; how does he know how he was designated?

155 Question withdrawn.

Q. Were you called as a witness before the grand jury of the District of Columbia in the summer of 1903, in the case of United States v. George W. Beavers?

A. No sir. You say in the summer.

Q. I mean by summer between April and October?

A. Yes sir, I was.

Re-direct examination by Mr. SEABURY:

Q. Do you know in what proceedings you were examined before the grand jury?
A. Yes sir, in the case of United States *v.* Richard Doe.
Q. That was the only designation of the case?
A. Yes sir; I have not met Mr. Doe yet.

Mr. FLINT resumes stand.

Direct examination by Mr. SEABURY (continued):

Q. Are you familiar with the prices of the machines made by the Elliott & Hatch Book Typewriter Co.?
A. During the time I was with them, yes.
Q. During that time, what priced machines were made?
A. $135, $150, $175 and $200.
Q. And how is the $200. machine designated,—any special number?
A. No. 5.
Q. Do you know whether or not No. 5 was the kind the Government used?
A. The number given on our accounts as the machine used.

Mr. YOUNGS: Objected to, and I ask that the witness answer the question.

156 A. Yes, from the accounts that they bought various machines.
Q. Were all the machines bought by the Government, particularly by the Post Office Department, No. 5, as far as you know?
A. The majority were 5's. There may have been a few of the smaller sizes.
Q. Was $200 the regular price for which No. 5 was sold to the trade in general?
A. That was the list price of the machine.
Q. And was it not customary for the company to sell it at any other price?
A. To agents at a discount.
Q. But outside that, it was the established price?
A It was the established price, but not always uniformly adhered to. There were a few exceptions.
Q. So that $200 was as cheaply as that machine No. 5 could ordinarily usually be bought?
A. By the public.
Q. During the year 1901, during your employment by the Elliott & Hatch Co., do you know whether or not your corporation paid any money to George W. Beavers for any purpose whatever?
A. So far as the books and accounts show, we paid no money whatever.

Mr. YOUNGS: I ask to have that stricken out, and ask the witness to answer the question.

The COMMISSIONER: I take it as far as it goes.

Q. Have you any knowledge that would lead you to believe that any such payments were made to Mr. Beavers on behalf of the corporation?

Objected to.

A. I have no knowledge that would lead me to believe that such money was paid.

157 Q. And in your position as assistant treasurer, if any money of the corporation was paid to George W. Beavers for the purpose of securing the contract from the Government, it would necessarily come under your notice?

Objected to.

Mr. SEABURY: In the line of his official duties.

The COMMISSIONER: He may be supposed to know.

A. I believe it would.

Q. Did any such matter come to your attention at all?

A. As to the payment of money?

Q. Yes.

A. It did not.

Q. And do you or do you not know that any money of the corporation was paid to Mr. Beavers on July 11, 1901?

A. As far as my knowledge goes——

Mr. YOUNGS: I see nothing in this indictment that says that they did.

Mr. SEABURY: It alleges that the money was paid by Mr. Towers as the agent of the corporation.

Mr. YOUNGS: It does not say anything about the assistant treasurer.

Mr. SEABURY: It says it was the money of the corporation that was paid. It is really competent.

The COMMISSIONER: Go on.

Q. Do you know of any sum of $350 or any other sum that the corporation paid Mr. Beavers on July 11 or any other time?

A. I do not.

158 Q. Do you know whether or not Mr. Towers ever paid any money to Mr. Beavers at any time?

A. I do not know anything about it.

Q. Was Mr. Towers at any time authorized by the Elliott & Hatch Book Typewriter Co. to pay either directly or indirectly to Mr. Beavers $350 or any other sum on July 11, 1901, or any other time, so far as you know?

Objected to.

Mr. SEABURY: I ask as to his knowledge.

A. Not to my knowledge.

Q. If the company at any time authorized such a payment, would that be a matter that would come before you in the line of your duties as assistant treasurer?

A. You say at any time, and then speak of a specified date.

Q. I refer to a specified date, 1901.

A. I think it would.

Q. It would come naturally in your duties?

A. I would not say in my duties, but I would have known it.

Q. You are familiar with the affairs of the Elliott & Hatch Book Typewriter Co., as to its financial matters?

A. Yes sir.

Q. And you would have known it?

A. Yes sir.

Q. Have you any knowledge whatever as to the alleged agreement between Towers and Beavers, whereby Beavers was to receive a part of the purchase price as commission in a matter pending before him in his official capacity, from the Elliott & Hatch book typewriting machine?

A. I have no personal knowledge.

Q. Have you any knowledge whatever relating to such
159 an agreement?

A. No knowledge whatever.

Q. How were the Elliott & Hatch Co.'s machines sold to the Government, do you know,—especially to the Post Office Department?

A. The machines the payment for which passed through my hands, had been sold or arranged to be taken prior to my coming into the company, while my knowledge of prices, etc., is from the accounts as they stood before I come there. There were some few cases after I come.

Q. After you come, how were they sold to the Post Office Department?

A. Through Mr. Gensler.

Q. What method did the company adopt with reference to these sales?

A. The machines were charged to Mr. Gensler as being outright purchases by him, with the understanding that such machines as were returned were to be credited to his account; and they were charged to him at $140 each. There were some few for which the charge was made directly against the postmaster, with the understanding that they were to be paid for at $200, and charged to him at $140.

Q. Mr. Gensler had been you- local agent for some time?

A. When I was there, Mr. Gensler, Senior, was not known as the local agent. His son, H. J. Gensler, was acting.

Q. Did the Elliott & Hatch Book Typewriter Co., while you were its assistant treasurer, ever pay any money to Mr. Gensler, or authorize Mr. Gensler to pay any money to Mr. Towers for Mr. Beavers

for the purpose of influencing Mr. Beavers's official action in regard to the sale of the Elliott & Hatch book typewriter?

A. Did the Elliott & Hatch Co. pay Mr. Towers for Mr.

160 Beavers?

Question repeated.

A. Not to my knowledge.

Q. And if any such payment had been made by the company, you would have known it, would you not?

A. I believe I would.

Q. Do you know whether or not during your connection with the Elliott & Hatch Book Typewriter Co., Mr. Beavers ever received, directly or indirectly, from the company, any money or thing of value, for influencing his official conduct with reference to the purchase by the Government of the Elliott & Hatch book typewriters?

A. Not to my knowledge.

Q. Have you any knowledge prior to your connection with it?

A. Not to my knowledge.

Q. Do you know of any agreement whatever between Mr. Gensler and Mr. Beavers, or Mr. Towers and Mr. Beavers, or any of those three gentlemen, relating to the division of profits of the book typewriters?

A. No knowledge whatever.

Q. You have never seen any documentary evidence whatever which would lead you to believe that that was the case?

A. No sir.

Cross-examination by Mr. YOUNGS:

Q. How long have you known Mr. Beavers?

A. Never have met the gentleman, sir.

Q. Never have seen him?

A. If he is in court to-day, I probably see him for the first time.

Q. You know W. Scott Towers; did he at any time have anything to do with your typewriter machine?

161 Objected to.

The COMMISSIONER: He may ask him.

Exception.

A. In what capacity.

Q. I ask you if he had anything to do with it?

A. Yes sir, that is, as far as my knowledge goes.

Q. What is it?

A. In the summer of——

Q. What position was it?

A. There was no official position that I know.

Q. Did you ever see a draft dated on or about the 6th day of October in the year 1900, No. 139,946, drawn by the Citizens'

National Bank of Washington City of the District of Columbia, on the Fourth National Bank of New York City, New York, for the payment of the sum of $350, to the order of W. Scott Towers?

A. I never saw such a draft.

Q. And by the said W. Scott Towers endorsed in blank, and delivered to George W. Beavers? May have been there?

A. Where?

Q. Might have been such a draft and you not see it?

A. Yes sir.

Q. There might have been such a draft and you not know it?

A. Yes sir.

Q. Were you an officer of the company in 1900?

A. No sir.

162 HOWARD W. JACOBS, called as a witness by the defendant, was duly sworn and testified as follows:

Direct examination by Mr. SEABURY:

Q. Are you in the employ of the Elliott-Fisher Co.?

A. Yes sir.

Q. How long have you been in their employ?

A. Since the first of March, last year.

Q. And is that when the company came into existence?

A. Yes sir.

Q. And prior to that, you were in the employ of the Elliott & Hatch Book Typewriter Co.?

A. Yes sir.

Q. How long were you with them?

A. Since March 15, 1900.

Q. Have you been continually in the employ of the Elliott & Hatch Book Typewriter Co. since March 15, 1900?

A. Yes sir, to March 1, 1903.

Q. In what capacity?

A. Bookkeeper and cashier.

Q. And in your capacity as bookkeeper and cashier of the Elliott & Hatch Book Typewriter Co., are you familiar with the accounts of the company?

A. Yes sir, as far as the regular bookkeeping went.

Q. And were you familiar with what contracts were made on the part of the company for the sale of its machines?

A. No sir, unless they came in the way of my notice in a bill.

Q. Did any contracts for the sale of Elliott & Hatch machines come under your notice, or the sale of those machines, to the United States Government or the Post Office Department?

A. No sir.

163 Q. Do you know whether or not in 1900 and 1901 any machines were sold to the Post Office Department?

A. No sir.

Q. The books would disclose the sales made?
A. The books would disclose the machines sold to Mr. Gensler. I do not remember.
Q. Are you familiar with any contracts made by Mr. Gensler for the sale of the machines?
A. No sir, except as regards the billing of the machines.
Q. Do you know if any machines were billed to Mr. Gensler?
A. I do.
Q. Was that during the years 1900 and 1901?
A. Mr. Gensler, Senior, and Junior. The senior's resignation was handed in the 31st of December, I think, but I do not know anything about it, because I was not then connected with the company.
Q. Do you know whether any machines were billed either against Mr. Gensler, Senior, or Mr. Gensler, Junior, during 1900 or 1901?
A. Yes sir.
Q. Do you know how many machines were billed to either one of these gentlemen?
A. No sir.
Q. Your books would disclose that?
A. Yes sir.
Q. Are you familiar with the prices at which the Elliott & Hatch machines were sold?
A. Somewhat, yes sir.
Q. Are you familiar with the usual price at which machine No. 5 was sold?
A. $200.
Q. $200 was the regular price?
A. Yes sir.
Q. Do I understand that means that the ordinary purchaser, going to the Elliott & Hatch Book Typewriter Co. to pur-
164 chase one of their machines, would have to pay $200 for it?
A. Yes sir, so far as I know; I am not in the habit of selling it.
Q. Of course, you are familiar with the prices of the machines sold by the company?
A. Yes sir.
Q. And would that same price apply provided three or four machines or a greater number were purchased?
A. Yes sir.
Q. As bookkeeper and cashier of the Elliott & Hatch Book Typewriter Co., you are familiar with the monies of the company disbursed on certain transactions?
A. Yes sir.
Q. It is your duty to know how those funds were expended?
A. Yes sir.
Q. And you did know how the funds of the company were disbursed?
A. Yes sir.
Q. Do you know whether or not the Elliott & Hatch Book Type-

writer Co., on July 11, 1901, paid George W. Beavers, or caused to be paid to George W. Beavers, by any of its agents, or other person, the sum of $350 or any other sum, for the purpose of influencing Mr. Beavers to exercise his official decision with reference to the Elliott & Hatch book typewriter?

A. I do not.

Q. If any such sum of money were sent or directed by the company to be paid, either directly or indirectly, to Mr. Beavers, would you have known it?

Mr. YOUNGS: Objected to, as there is nothing that alleges that.

The COMMISSIONER: He may ask.

165 A. I should say I would.

Q. Did you, in fact, know of any such?

A. I did not.

Q. Have you any knowledge whatever relating to an alleged agreement that was made between Mr. Towers and Mr. Beavers on the 6th day of October, 1900, whereby Mr. Beavers was to receive compensation for influencing his decision with reference to the Elliott & Hatch machines?

A. No sir.

Q. So far as you know, did the Elliott & Hatch Book Typewriter Co., at any time either authorize Mr. Towers or anybody else to offer Mr. Beavers any money to induce him to act on behalf of the Elliott & Hatch book typewriter?

A. Not to my knowledge.

Q. Do you know of your own knowledge if there was any matter pending before Mr. Beavers with reference to the Elliott & Hatch Book Typewriter Co. on or about the 11th of July, 1901?

A. No sir.

Q. Have you any knowledge whatever with reference to any agreement or understanding between Mr. Gensler and Mr. Towers and Mr. Beavers, or any of them, relating to an alleged division of the proceeds of sale of the Elliott & Hatch typewriter?

A. No sir.

Q. You are familiar, are you not, with the various book typewriters that were on the market in October, 1900?

A. No, sir.

Q. Do you know whether there were any other book typewriters than the Elliott & Hatch on the market at that time?

A. Yes sir, one.

166 Q. And what was that one?

A. The Fisher.

Q. And have you had any experience with book typewriters in your connection with the company?

A. No, sir, only as bookkeeper.

Q. Do you know whether the Elliott & Hatch book typewriter was a patented machine?

Objected to.

The COMMISSIONER: He may ask him if he knows.
Question withdrawn.

Q. You have frequently seen the Elliott & Hatch book typewriter?
A. Yes sir.
Q. Have you ever seen any mark indicating that the article is patented?

Objected to.
The COMMISSIONER: He may answer.

A. It is patented.
The COMMISSIONER: The question is whether you have seen a mark on the machine.
A. I do not remember.
Q. You do not remember ever observing the particular mark on the machine indicating that it is a patented article?
A. No sir.

Cross-examination by Mr. YOUNGS:

Q. You stated a moment ago, in response to Mr. Seabury that you had never known of any agreement between Mr. Gensler and Mr. Beavers and Mr. Towers; were you in close communion and contact with those gentlemen all the time?
A. No sir.
Q. Were you ever in contact with Mr. Beavers?
167 A. Never saw him until today.
Q. Did you ever see a draft, dated on or about October 6, 1900, bearing the number 139,146, drawn by the Citizens' National Bank of Washington City, District of Columbia, upon the Fourth National Bank of New York City, New York, for the payment of the sum of $350, to the order of W. Scott Towers, and by said W. Scott Towers endorsed in blank?

Objected to.

Q. There might have been such a draft and you not seen it?
A. If it was not made by the Elliott & Hatch Co.
Q. I asked you, there might have been and you not seen it?
A. Yes sir.

168 Mr. SEABURY: I would like an opportunity to subpœna witnesses, and I would like to apply to your honor for *subpœnas duces tecum*.
The COMMISSIONER: I do not think I can issue *subpœnas duces tecum*. I think you have to apply to the court for that.
Mr. SEABURY: I desire to say to your honor, with reference to this case, that we have applied to Judge Thomas for a writ of *habeas corpus*. Judge Thomas has stated that he would hear the application on the writ on Friday morning; and he suggested that this

hearing go over to Saturday or some date subsequent to Friday. At that time we will produce such witnesses as we are able to obtain.

Mr. YOUNGS: I think the counsel should state who his witnesses are.

Mr. SEABURY: I do not feel that I am obliged to make that statement, your honor. I do not know whom I may call, yet. I do not think that I should bind myself at this time to state what witnesses I shall call.

The COMMISSIONER: I do not think we shall ask you to.

Mr. YOUNGS: Let us see whether it is unfair or not. This is not the first time there has been a proceeding of this kind. Commissioners have issued subpœnas to witnesses outside the district. They endeavored to subpœna the United States attorney in this
169 district to the southern district, and endeavored to have him locked up for contempt of court. Perhaps they are going to do the same thing over again. We will not permit these monkey-shines over here.

Mr. SEABURY: I can assure the district attorney that there will be no monkey-shines. I call your honor's attention to the fact that it was Judge Thomas's suggestion that it be put over.

The COMMISSIONER: If there is an intervening writ of *habeas corpus*, and it is decided that we have no jurisdiction, this proceeding falls.

Mr. YOUNGS: Then, I suppose that the only thing to do is to admit Mr. Beavers to bail.

Mr. SEABURY: I think that is a matter that is satisfactorily determined. I think that nobody is interested but the marshal.

The COMMISSIONER: I think, then, that this ought to be adjourned for a week.

Mr. CHATFIELD: In the meantome, the defendant stands committed.

Mr. SEABURY: He is in the custody of the marshal, as I understand it. As I understand it, the marshal will release Mr. Beavers, and Mr. Beavers will come Friday or Saturday to reply to the writ.

Mr. YOUNGS: If your honor pleases, this complication has arisen which I feared would arise under the statement made by Judge Thomas this morning.

The COMMISSIONER: It is very simple. I do not see any trouble about it at all. I have to remand him to the custody of the
170 marshal. He has been surrendered by his counsel.

Mr. YOUNGS: Is he surrendered under the $10,000 bail?

The COMMISSIONER: No, he is surrendered before me, and I remand him to the custody of the marshal.

Adjourned to Monday morning at 10:30.

171 BOROUGH OF BROOKLYN, *June* 20, 1904.

Hearing resumed before U. S. Commissioner B. Lincoln Benedict, at 10:30 a. m.

Appearances.

Wm. J. Youngs, Esq., U. S. attorney, for the Government.
Wm. M. Seabury, Esq., for the defendant.

M. D. HELM, called as a witness by the defendant, was duly sworn and testified as follows:

Direct examination by Mr. SEABURY:

Q. Mr. Helm, what is your business?
A. I deal in printers' and bookbinders' machinery and general supplies.
Q. How long have you been engaged in that business, Mr. Helm?
A. Twenty odd years.
Q. Are you acquainted with Mr. George W. Beavers?
A. Yes, sir.
Q. And you are also acquainted with W. Scott Towers?
A. Yes, sir.
Q. Have you seen a machine known as the Elliott & Hatch book typewriter, Mr. Helm?
A. I have, sir.
Q. Did you make any efforts, prior to October 6, 1900, to introduce into the Post Office Department the Elliott & Hatch book typewriter?
A. Some years before.
Q. About when was it, Mr. Helm?
A. My recollection of it is about 1898.
Q. Did you call on the First Assistant Postmaster General with reference to the introduction of those machines?
A. I did.

172 Q. And who was then First Assistant Postmaster General?
A. Perry S. Heath.
Q. And did you secure letters of introduction from Mr. Heath to anybody with reference to the introduction of these machines in the department?
A. My recollection is that I got Mr. Heath's card, in place of a letter of introduction, to a person in the department.
Q. You discussed the merits of the machine with Mr. Heath?
A. I did.
Q. Did he approve or disapprove of the introduction of these machines in the department?
A. I cannot say whether he approved or disapproved, but the fact

that he gave me a card—I have known Mr. Heath all his life, and I thought he had confidence in my judgment, and I recommended the machine as being of service to the department.

Q. Did you ever see Mr. George W. Beavers with reference to the introduction of this machine in the department?

A. No sir.

Q. And after your interview with Mr. Heath, do you know whether or not some machines were installed in the department?

A. My recollection is that some were installed at that time. In fact, I was taken by Mr. Gensler to see the machine which was installed in the money order department, and it was on that basis that I went to see.

Q. Did you ever have any conversation whatever with Mr. Beavers with reference to the installation of these machines in the Post Office Department?

A. No sir, I was working in a different direction.

173 Q. Was this conversation which you had with Mr. Heath with reference to the installation of the machines, had with him prior to October 6, 1900?

A. Yes sir, I think it was 1898, my recollection of it.

Q. And so far as you know, did Mr. Beavers have anything to do whatever with the installation in the department of these machines?

A. At that time? I am sure that I have not any. I do not know now that he ever had anything to do with it.

Q. Mr. Helm, did you ever know of any agreement existing between Mr. Towers and Mr. Beavers, made on October 6, 1900, or at any other time, by which Mr. Beavers was to receive compensation for using his influence for purchase by the department of the Elliott & Hatch book typewriter?

A. I never heard of any such thing.

Q. Do you know whether or not Mr. Beavers received on July 11, 1901, or at any other time, three hundred and fifty dollars, or any other sum, from Mr. Towers, individually or as agent for the Elliott & Hatch Book Typewriter Company, for the purpose of influencing his official decision with reference to the Elliott & Hatch book typewriter?

A. I do not.

Q. For how long a time, Mr. Helm, had you known Mr. Towers?

A. Twenty odd years.

Q. And are you familiar with Mr. Towers's business in the city of Washington?

A. In what way, Mr. Seabury?

Q. You know the character of his business, do you not?

A. Oh, yes.

Q. And do you know whether or not Mr. Towers frequently cashed drafts and purchased drafts for his friends?

174 Objected to.

The COMMISSIONER: How is that material?

Mr. SEABURY: I want to show, Mr. Commissioner, that it was Mr. Towers's habit of doing business to purchase and cash drafts for his friends. I will connect it later on with the case.

A. He has cashed a good many for me, and I have seen him do it for other people. In fact, Mr. Towers is everybody's friend in Washington, and they use him as I did.

Q. Had Mr. Towers more than once purchased drafts for you prior to October, 1900?

A. Many times.

Q. And subsequent to October, 1900?

A. Yes, sir.

Q. And had he also done so subsequent to July 11, 1901?

A. Yes, sir.

Q. Why was it, Mr. Helm, that you requested Mr. Towers to cash certain drafts for you?

A. For different reasons.

Q. And purchase them?

A. Purchase them?

Q. Yes.

A. In my business with the Government, I frequently got United States Treasury warrants. When I got them when I was in Washington, I would frequently take them to Mr. Towers, or some other of my friends, and I take them first and get them cashed, and take the money to Mr. Towers, and get a New York draft from him, and save the exchange, and give him the money for it.

Q. Your purpose in doing that was to save yourself the rate of exchange, was it not?

A. Yes, sir.

Q. Is it not a fact that you had a large bill yearly for such
175 drafts?

A. Almost weekly.

Q. And during the year, what would that bill amount to?

A. Several hundred dollars; a hundred dollars, I know. I never counted it up. I would like to say that Mr. Towers is not the only man. I did it for friends, and he was easy of access, right across from the Treasury.

Q. Do you recollect any specific people for whom Mr. Towers has cashed and purchased drafts?

A. I could not name them, but I have seen him do it many times; not only get drafts, but cash checks, as he has cashed mine.

Q. Knowing Mr. Towers as you do, would you regard it as a usual or unusual occurrence?

A. Up to a few months ago, I would say almost a daily occurrence. I have associated with him a good deal in Washington, and I have seen various persons come in, and he would cash their checks.

Q. Do you recall, Mr. Helm, having a conversation with a post

office inspector with reference to a certain draft given you by Mr. Towers for one hundred and ten dollars?

A. I do.

Q. What was that conversation?

Mr. YOUNGS: I object, if your honor pleases. It is perfectly immaterial.

The COMMISSIONER: If it is connected with this case, I will take it. Of itself, of course, I will not take it.

A. I recall a case. I was subpœnaed before the grand jury in a case——

Mr. YOUNGS: I object to his stating anything that took place before the grand jury.

176 A. This is not before the grand jury. It is a conversation with Inspector—I think his name was Magee. He met me in the courthouse when I appeared there, and he asked me a question, if I had ever been in the employ of Mr. Towers in this Elliott & Hatch business I told him I never had, or in any other business. He asked me if Mr. Towers had ever paid me any money. I said no. He said, "Are you sure?" I said "Yes." And he pulled out of his pocket a New York draft for one hundred and ten dollars,—a Scott Towers draft to my order. He asked me to explain, and I could not, but told him there were many others. But in New York I found the check which I had given Mr. Scott Towers. I gave him a check for one hundred and ten dollars, for which he gave me a New York draft. I needed the draft for interest money in Philadelphia, and they would not accept New York funds. As I had no bank in Washington, I went to Mr. Towers.

Q. Have you that draft?

A. I have my check.

Q. May I see it?

A. (Producing check.) That is my check to Mr. Towers, bearing even date with the draft of similar amount, and here was what it was for.

Mr. YOUNGS: I ask to have the answer stricken out. It is all voluntary on the part of the witness.

Mr. SEABURY: I submit that it is all in answer to the question.

The COMMISSIONER: It is all subject to objection.

Mr. Seabury offers check in evidence.

177 The COMMISSIONER: Taken, subject to objection.

Mr. YOUNGS: I object to it, as entirely immaterial and irrelevant.

The COMMISSIONER: All the evidence is taken subject to objection, and he has got to connect it with the case.

Marked Exhibit 1, being a certain check, signed by M. D. Helm, drawn on the Central National Bank of the City of New York, and

made payable to the order of W. Scott Towers, for $110.00, dated July 23, 1901, being check No. 582, endorsed W. Scott Towers, also endorsed to the order of the Fourth National Bank of the City of New York on July 23, 1901, by the Citizens National Bank of Washington City, and further endorsed as received payment on July 24, 1901, through the New York clearing house, Fourth national bank, New York.

Mr. SEABURY: May I return the exhibit to the witness, Mr. Commissioner?

The COMMISSIONER: Yes.

Q. As I understand it, Mr. Helm, you testify that this is the check which you gave to Mr. W. Scott Towers in exchange for the draft of one hundred and ten dollars to which you have already referred; is that correct?

A. That is correct.

Q. Is this transaction representative of many similar transactions which you have had with Mr. Towers, Mr. Helm?

A. Yes sir, many of them.

178 On the request of the district attorney, the commissioner retains check marked Exhibit 1.

Mr. SEABURY: I have here an original subpœna and a copy, together with a letter from the United States marshal's office of the District of Columbia, in which he makes return, and states that he has been unable, after diligent effort, to make service on the witness described in the subpœna. For that reason I have to ask your honor for an adjournment of the matter. The report is that the witness is in St. Louis, and for that reason, I do not think that we could secure his attendance before Monday of next week. He is a material witness, and I cannot go on without him very well. I might say, Mr. Commissioner, that I fully expect to terminate this proceeding on Monday next. While I do not wish to make a binding promise to do so, or to confine my testimony to the one witness, I may say that I expect to finish at the next hearing.

The district attorney offering no objection, the hearing was adjourned to June 25, 1904, at 10:30 a. m.

179 BOROUGH OF BROOKLYN, *June* 25, 1904.

Hearing resumed before U. S. Commissioner B. Lincoln Benedict at 10:15 a. m.

Appearances.

Wm. J. Youngs, Esq., U. S. attorney for the Government.
Wm. M. Seabury, Esq., for the defendant.

Mr. SEABURY: I desire to offer in evidence warrant of removal, signed by Judge Holt, on or about the tenth day of November,

1903, directing the removal of George W. Beavers from the southern district of New York to the eastern district of New York, to stand trial on a certain indictment there pending against him; together with the warrant to apprehend the accused, the said George W. Beavers, issued by Samuel M. Hitchcock, a commissioner of the United States for the southern district of New York, upon which the said George W. Beavers was apprehended in the southern district of New York, issued on the third day of September, 1903; together with a bench warrant, issued by Hon. Edward B. Thomas, judge of the district court of the United States for the eastern district of New York, issued on or about the 14th day of August, 1903; and three certain indictments found by the United States grand jury in and for the eastern district of New York, each of which purports to charge the said George W. Beavers with violations of sections 1781 and 1782 of the United States Revised Statutes; and a certain bond that was entered into between George W. Beavers
180 as principal, and James R. Brown, as surety, and the United States Government, whereby the said Beavers and Brown bound themselves to await the further order of the circuit court of the United States for the eastern district of New York, and to appear and stand trial upon the indictments above referred to. Will the district attorney concede that the indictments above described are now pending in the circuit court of the United States for the eastern district of New York against George W. Beavers, who is now arraigned before the commissioner in this proceeding, and that these indictments have not been set for trial, have not been *nolle prossed* or quashed, and are not disposed of at this time?

Mr. YOUNGS: And have not been plead to.

Mr. SEABURY: No pleas have been entered. However, you concede that the accused was arraigned for pleading and that the time was extended and has not yet expired?

Mr. YOUNGS: Yes, I concede that. No, I will not concede that the time of pleading is extended. I will say that at the time he was arraigned a motion was made to quash and for a bill of particulars, and pending the argument on these motions, he held over.

Mr. SEABURY: The court has extended the time to plead until the determination of those motions.

Mr. YOUNGS: I do not understand that the court has extended the time to plead.

181 The COMMISSIONER: No plea has been tendered. I do not know that the district attorney has ever moved that he be arraigned.

Mr. SEABURY: They undoubtedly disclosed that; and I asked that Judge Thomas extend the time to plead until the hearing of those motions.

Mr. YOUNGS: I think that is so.

The COMMISSIONER: What is the materiality or relevancy of these papers?

Mr. SEABURY: I want to show that this is not a proper case for the commissioner.

The COMMISSIONER: That has nothing to do with me. I order him committed or released on bail.

Mr. SEABURY: Or discharged.

The COMMISSIONER: Of course.

Mr. SEABURY: I want to make a proper case for a discharge, and as a part of my case, to warrant this discharge, I want these papers on the record.

The COMMISSIONER: How are they material?

Mr. SEABURY: While there are indictments pending against the accused and undisposed of, there can be no proper case for removal from this jurisdiction.

The COMMISSIONER: This is not a case for removal. That is a question for the court to determine.

Mr. SEABURY: But the court can only determine that question by the record before it.

Received, subject to the objection of the district attorney.

Adjourned to 10:30 a. m., Tuesday, June 28, 1904.

182 BOROUGH OF BROOKLYN, *June* 28, 1904.

Hearing resumed before U. S. Commissioner B. Lincoln Benedict.

Appearances.

Wm. J. Youngs, Esq., U. S. attorney; Thomas Ives Chatfield, Esq., ass't U. S. attorney, for the Government.

Wm. M. Seabury, Esq., for the defendant.

EVANDER H. SCHLEY, called as a witness by the defendant, was duly sworn, and testified as follows:

Direct examination by Mr. SEABURY:

Q. Mr. Schley, what is your business?

A. Secretary and treasurer of the Elliott & Hatch Book Typewriter Co.

Q. How long have you been such?

A. I think I was elected January first, 1899.

Q. Since January first, 1899, have you had entire charge of the finances of the Elliott & Hatch Book Typewriter Co.?

Mr. CHATFIELD: I suppose this is all subject to the same general objection as the testimony of all the witnesses, that it is immaterial, irrelevant and incompetent.

A. I have.

Q. And are you familiar with all the checks that have been drawn, and monies paid out by the Elliott & Hatch Book Typewriter Co. during that period of time?

A. Well, I have seen every check.

Q. No check has been drawn on the funds of the com-
183 pany other than has been seen by you; is that correct?

A. Not that I know of.

Q. Who was it, Mr. Schley, who had charge of the territory of the city of Washington, District of Columbia, for the sale of these machines?

A. Mr. Gensler.

Q. Which Mr. Gensler?

A. Both,—the father, and later the son.

Q. Do you know Mr. W. Scott Towers?

A. Yes.

Q. Did the Elliott & Hatch Book Typewriter Co. ever pay to Mr. Towers any money, to be delivered by Mr. Towers to Mr. Beavers, either individually or as agent of the Elliott & Hatch Book Typewriter Co., for the purpose of having Mr. Beavers's official judgment and decision influenced with reference to the Elliott & Hatch machines?

A. I have never heard of any such.

Mr. Chatfield objects to the form of the question.

Q. You say that you are familiar with all the financial transactions which the Elliott & Hatch Book Typewriter Co. has had; if the company had paid to Mr. Towers any money for the purpose I have mentioned, would you have known it?

—. I would, yes.

Q. And you say you have no knowledge of any such payment of money?

A. That is right.

Q. Do you know whether or not any money was ever paid, either directly or indirectly, by the Elliott & Hatch Book Typewriter Co. or any of its officers or agents, to Mr. Beavers, for the purpose of having his official conduct influenced with reference to the Elliott & Hatch book typewriter machine?

184 Mr. CHATFIELD: I object, unless the witness answers "yes" or "no."

Mr. SEABURY: I object to Mr. Chatfield's instructing this witness. It is not the prerogative of the counsel to instruct the witness at all.

Mr. CHATFIELD: After this, I would like to have the witness instructed that when the question calls for yes or no, he answer yes or no, and not answer the next question.

(Question read.)

A. No, I do not know that money was ever paid.

Q. You are familiar with the machine which the Elliott & Hatch Book Typewriter Co. makes and designates as No. 5, are you not?

A. Somewhat; I am not much of a mechanic, but I know the machine.

Q. You know that your company makes such a machine?
A. Yes.
Q. And do you know whether or not the machine is patented?
A. It is patented.
Q. And do you know whether there was, during the year 1901 and prior to that time, any other machine in the market, which could accomplish the same amount of work as the Elliott & Hatch book typewriter?
A. There was a competitor, the Fisher.
Q. What kind of a machine was it?
A. It did the same work.
Q. Did it do the same work?
A. Yes, but not so successfully.
185 Q. Then, it did not do the same work in the same way?
A. It could do it, yes.
Q. There were a few points of difference in the two machines, were there not?
A. Yes.
Q. In your opinion, was the Elliott & Hatch regarded as the superior machine of the two?
A. Yes sir.

Mr. CHATFIELD: Objected to, as a question of opinion.
The COMMISSIONER: It was only asked as to his opinion.

Q. Did you ever hear of any agreement which was entered into between Mr. Towers and Mr. Beavers whereby it was alleged that Mr. Towers paid Mr. Beavers money for the purpose of influencing his official decision with reference to the Elliott & Hatch book typewriting machine?
A. I never heard of any such arrangement.
Q. You have no knowledge whatever, have you, Mr. Schley, that such an agreement ever existed?
A. No sir.
Q. Do you know whether or not on or about July 11, 1901, Mr. W. Scott Towers paid to Mr. Beavers the sum of $350. for the purpose of influencing his official decision with reference to these machines?
A. No sir.
Q. Do you know whether Mr. Towers was ever authorized by the Elliott & Hatch Book Typewriter Co. to make any such payment as that?
A. I never heard of any such.
Q. You are the treasurer?
A. Yes sir.
Q. And if Mr. Towers had ever been authorized by the company, you would have known it?
A. I would have been apt to know it.
186 Q. You would have known it?
A. I certainly would.
Q. Was Mr. Towers ever authorized to make any such payment?

A. Not that I know of.
Q. Have you ever met Mr. Beavers?
A. No sir.
Q. You have never had any transactions with him at all, have you?
A. Not at all.

No cross-examination.

Mr. CHATFIELD: On the objection that this testimony is incompetent, irrelevant and immaterial, I move to strike it out.

Mr. SEABURY: I note, Mr. Commissioner, that there is present before you Mr. Frank E. Little, a witness whom the accused had previously subpœnaed. Mr. Little as you recall, was questioned while he was on the stand, and was not permitted to answer the questions, on the ground that the questions were improperly addressed to him on cross-examination. I now ask Mr. Little to take the stand.

The COMMISSIONER: As your witness?

Mr. SEABURY: Yes.

FRANK E. LITTLE takes the stand as a witness for the defendant, and testifies as follows:

Direct examination by Mr. SEABURY:

Q. Mr. Little, you are the person who verified the complaint which asks for the removal of George W. Beavers to the District of Columbia, are you not?
A. I am.

187 Q. And in that complaint, you state that the source of your information and the grounds of your belief as to the allegations set forth in the complaint on information and belief, are an exemplified copy of the indictment which is annexed to the complaint, and also a bench warrant which is annexed to the complaint. Have you any personal knowledge of the facts alleged in this complaint other than that you obtained from reading the indictment?
A. I have not.
Q. Have you any personal knowledge of any alleged agreement between W. Scott Towers and George W. Beavers, made on or about October 6, 1900, whereby Mr. Towers agreed to pay certain sums of money to Mr. Beavers for the purpose of influencing his official decision with reference to the purchase by the Government of the Elliott & Hatch book typewriters?
A. No.
Q. Do you know, of your own personal knowledge, that George W. Beavers, on or about the 11th day of July, 1901, received a certain draft or sum of money for $350 from W. Scott Towers for the purpose of influencing his official decision with reference to the Elliott & Hatch book typewriters?

Mr. CHATFIELD: I think the general answer covers these specific questions.

The COMMISSIONER: He may put it if he wants.

A. I do not.

Q. Do you know, Mr. Little, of your own knowledge, that on or about July 11th, 1901, there was pending before Mr. Beavers any matter or thing requiring his decision or the exercise of his
188 official judgment with reference to the purchase of the Elliott & Hatch book typewriters?

Mr. CHATFIELD: I object, on the ground that he has stated that his knowledge is all derived from the exemplified copy of the indictment, and the question as to whether he knows anything about it any other way is incompetent, irrelevant and immaterial.

The COMMISSIONER: I do not see any objection to his asking it. The general question he has already asked; if he wants to ask particular questions as to particular facts——

Mr. CHATFIELD: No, Mr. Commissioner, the witness has stated that his knowledge on which the complaint was made, was derived from the indictment. He might know a great deal upon specific things set forth; but so long as the complaint sets forth that the source of his information and the grounds of his belief are derived from that indictment, some casual knowledge he might have gained as to some of the facts is no part of the proof, because our case is not based upon it. If he does not know anything, it does not affect it; if he does, it strengthens it.

Mr. SEABURY: It is a specific question, whether or not there was pending before Mr. Beavers on or about July 11, 1901, any matter calling for his official judgment. The basis of this indict-
189 ment is that there was a matter pending before him.

The COMMISSIONER: Now you are asking him for a fact aside from what is specified in the indictment.

Mr. CHATFIELD: What he might know on the outside as to the conduct of the Post Office Department.

Mr. SEABURY: I have not done that at all. When I have, it is time to make an objection.

The COMMISSIONER: That is what you are doing. You are asking him something not stated in the indictment.

Mr. SEABURY: Suppose the witness answers that he has positive personal knowledge. You will find in the indictment the allegation that this money was received with reference to a matter then pending before him. Now I ask the witness if there was a matter pending before him.

Mr. CHATFIELD: The only answer he could make would be that there was or he did not know.

Mr. SEABURY: It is very improper for Mr. Chatfield to instruct the witness. He is quite able to take care of himself.

The commissioner excludes the question.

Mr. Seabury excepts.

Mr. SEABURY: Do I understand that you exclude all questions?

190 The COMMISSIONER: I do not think that in an examination like this, testimony should be gone into, which may be competent testimony and necessary testimony on the trial of the indictment.

Mr. SEABURY: Does your honor mean to limit my examination to all matters that do not bear upon the issues that we produce upon the trial?

Q. Did you ever overhear any conversations had between Mr. Towers and Mr. Beavers?

Objected to.

A. Not in relation to this matter.

191 Mr. SEABURY: For the purpose of permitting the accused to make a statement in his own behalf, I will ask Mr. Beavers to take the stand. I would like to ascertain who are present in the room. Who are these gentlemen who have just come in?

Mr. YOUNGS: Personal friends of mine from Oyster Bay, who came in to see me.

Mr. SEABURY: Inspectors?

Mr. YOUNGS: No, the county clerk of Nassau county and the treasurer.

Mr. SEABURY: I do not want to be discourteous to you, Colonel, but I must ask that the persons who have entered the room, other than the district attorney, the accused and his counsel, be requested to leave.

Mr. YOUNGS: This is a public hearing, is it not?

The COMMISSIONER: Yes.

Mr. YOUNGS: I do not know of any reason why the newspaper boys should be excluded, or anybody else.

Mr. SEABURY: You understand, Colonel, it is not meant for any discourtesy toward you.

The COMMISSIONER: I decline to order the room cleared.

Mr. Seabury excepts.

192 GEORGE W. BEAVERS, the defendant, being duly sworn, testified as follows:

Direct examination by Mr. SEABURY:

Q. Are you the person accused in the proceeding now pending before this commissioner?

A. I am.

Q. Are you also the same person against whom three indictments have been found in the eastern district of New York, purporting to charge you with violations of sections 1781 and 1782 of the United States Revised Statutes?

A. I am.

Q. Was it at your instance that the Elliott & Hatch book typewriter was placed or installed in the Post Office Department?

A. No.

Q. Under what circumstances was it placed in the department?

A. Under the direction of the First Assistant Postmaster General.

Q. And in making allowance for the Elliott & Hatch book typewriter, did you ordinarily act under the instructions of the First Assistant Postmaster General?

A. That was the rule of the department.

Q. And you did so act?

A. Yes sir.

Q. Did you act under his direction with reference to the purchase of the machines specified in this indictment?

A. Yes, that was the rule of the department.

Q. And it was not varied in this instance?

A. No sir.

Q. Did you, on or about October 6, 1900, enter into an agreement with W. Scott Towers, whereby you were to receive $25
193 for each Elliott & Hatch book typewriter thereafter to be purchased by the Post Office Department of the Government?

A. No.

Q. Did you, on or about July 11, 1901, receive from W. Scott Towers a draft for $350?

A. I may have done so. I received a number of drafts from Scott Towers.

Q. If you received such a draft, Mr. Beavers, was it received by you for the purpose of influencing your official conduct with reference to a matter relating to the Elliott & Hatch Book Typewriter Company then pending before you?

A. No.

Q. Was there, on or about July 11, 1901, any matter relating to the Elliott & Hatch book typewriter pending before you?

A. No.

Q. (continued). —requiring your official action and decision?

A. No.

Q. You have known Mr. Towers for several years, have you not, Mr. Beavers?

A. Yes, I have known him about seven years, I guess.

Q. And if you received this draft I referred to, state under what circumstances.

A. It was in the nature of a loan, as I remember it. I have received many drafts from Mr. Towers. He was a man with considerable acquaintance with the banks in Washington, and he frequently obtained drafts for me on New York and elsewhere, and sometimes had notes discounted for me.

Q. And cashed checks for you?

A. Had them cashed through his banking acquaintance.

Q. And had he bought drafts?

A. Scores of times.

Q. And each time did you reimburse him in funds?

194 A. Where it was not in the nature of a note, I would. That was to save exchange.

Q. And were these transactions had by you with Mr. Towers both prior and subsequent to July 11, 1901, and October 6, 1900?

A. Yes, sir.

Q. And at or about those periods?

A. It ran through our entire acquaintance.

Q. And that was quite an ordinary transaction, was it not?

A. Yes sir.

Mr. SEABURY: I desire to move to strike out——

Mr. YOUNGS: I suppose I have a right to cross examine.

Mr. SEABURY: I shall object to your cross examination.

The COMMISSIONER: He came simply as a volunteer to make a statement.

Mr. YOUNGS: That makes him a competent witness.

Mr. CHATFIELD: He insisted on being sworn. He has a right to cross-examine if he wants to.

Mr. SEABURY: I object to any cross-examination of Mr. Beavers, upon the ground that the defendant took the stand merely for the purpose of making a statement, which statement was made for the purpose of answering the charge and to explain the facts alleged against him, in accordance with section 196 of the New York

195 Code of Criminal Procedure, and cross-examination is not contemplated by this section or any other section of the code, by which this proceeding is governed and controlled; and I respectfully instruct the witness to decline to answer any questions addressed to him on cross-examination on that ground. I desire to further state, as evidence of our good faith, that the indictment which is the basis of the removal proceeding, is not the only indictment which has been found against him, and for that reason it would be extremely unwise to allow him to enter into any rambling cross-examination.

Cross-examination by Mr. YOUNGS:

Q. Mr. Beavers, did you ever have any bank accounts in Washington?

Mr. SEABURY: I object, Mr. Commissioner, and again instruct the witness not to answer, upon the grounds already urged.

Mr. YOUNGS: Will the court please instruct the witness to answer?

Mr. SEABURY: I object to such instruction.

The COMMISSIONER: I do not think that it is necessary for me to instruct him to answer.

Mr. YOUNGS: I think that the court should tell him whether he must or must not.

The COMMISSIONER: He claims the privilege.

Mr. YOUNGS: Can he claim it on the witness stand?

The COMMISSIONER: What may result therefrom is to be
196 seen, but you know the situation before the commissioner. There is no power to punish here, or anything else.

Mr. YOUNGS: But the district court has the power.

Mr. SEABURY: If you wish to start a proceeding to punish Mr. Beavers for contempt, you can certainly do so.—I desire to object to the question asked by the prosecuting attorney, on the ground that it is incompetent, immaterial and irrelevant and beyond the scope of the direct examination, and further, that there has been no direct examination, in the proper sense of that expression. The accused took the stand merely for the purpose of making this statement in his own behalf.

Defendant rests.

Mr. SEABURY: I move to strike out the indictment received in evidence by the commissioner in this proceeding, on the ground that its probative force has been entirely overcome and destroyed by the positive testimony of the witnesses produced before the commissioner and the primary evidence upon which the indictment was found.

Denied. Exception.

197 Mr. YOUNGS: I ask the court again to instruct the witness that he must answer the questions propounded to him on cross-examination by the district attorney.

The COMMISSIONER: I do not think I will instruct him.

Mr. YOUNGS: I understood the commissioner to say that the witness pleads the privilege.

The COMMISSIONER: Do not let us discuss questions of law. I spoke only in a general way.

Mr. YOUNGS: I insist, if that is the case, that the defendant's counsel state what the question of privilege is.

Mr. SEABURY: I decline to make any further statement than I have already made.

The COMMISSIONER: I do not think that remark of the commissioner is of any consequence.

Mr. YOUNGS: May I ask the commissioner to put this on the record: The district attorney requests the defendant to state whether he refuses to answer the questions propounded to him on cross-examination, on the ground that it may tend to incriminate or degrade him.

Mr. SEABURY: The witness has not objected on that ground, and does not at this time. I think the grounds of objection are sufficiently set forth on the record already. On those grounds, the witness has respectfully declined to answer the questions addressed to him.

198 Mr. YOUNGS: If the court please, as I understand it, the only ground upon which a person having voluntarily offered himself as a witness in the case and who has been sworn, can re-

fuse to answer a question on cross-examination, is on the ground that it may tend to incriminate or degrade him.

Mr. SEABURY: I think the accused is well within his rights in this proceeding. He is more than a witness here. He is the accused person. His purpose has been accomplished. The New York code of criminal procedure, which governs this proceeding, in no way contemplates such cross-examination.

Mr. YOUNGS: Will the counsel contend that if this were a trial in a court, the witness could refuse to answer a question on any ground but that it would tend to incriminate or degrade him?

Mr. SEABURY: I think that a sufficient answer to that is to say that this is not a trial,—only a hearing,—and covered by different rules altogether. I wish to state to you, Mr. Commissioner, that the declination of the witness is made with all due respect to you and this court, of which you are a branch. There is no disrespect intended by his refusal to answer the questions at all.

Mr. YOUNGS: I think he should be instructed, if your honor please, on cross-examination.

199 The COMMISSIONER: I do not think I will instruct him.

Mr. YOUNGS: Under those circumstances, I will ask your honor to grant us an adjournment.

The COMMISSIONER: I do not see the necessity. You insisted that the matter be closed today.

Mr. SEABURY: I move to dismiss the proceedings, Mr. Commissioner, and for the discharge of the prisoner, on the following grounds:

(1.) That the commissioner is without jurisdiction to entertain the proceedings.

(2.) That the arrest of the accused and his present detention under the warrant to apprehend, issued by the commissioner, is illegal and void, and such arrest and detention of the accused is without due process of law.

(3.) That there is no evidence before the commissioner that establishes probable cause to believe the accused to be guilty of a crime.

(4.) That regarding the indictment as *prima facie* evidence against the accused, its probative force has been totally overcome and destroyed by the positive testimony of the witnesses produced by the accused, contradicting all its material averments, and further, by the production before the commissioner of a substantial part of the primary evidence upon which such indictment

200 was found.

(5.) That it affirmatively appears, from the preponderance of the testimony offered, that there is no probable cause to believe the accused guilty of a crime.

(6.) Because the prosecution has failed to sustain its burden of proof, which rests upon the prosecution at every stage of a criminal proceeding.

(7.) Because the weight of evidence is clearly in favor of the accused.

(8.) Because the indictment fails to state facts sufficient to constitute a crime.

(9.) Because it affirmatively appears from the record before the commissioner that this is not a proper case in which to hold the accused to await the order of the district judge, since the accused is the same person who has been indicted by the grand jury of the eastern district of New York on three separate indictments, which attempt to charge the accused with the commission of divers crimes against the United States; that he has been arraigned upon each of said indictments for the purpose of pleading thereto, but that he has not yet been tried upon such indictments or any of them, nor has any of such indictments been quashed or *nolle prossed*, but they are still pending against the accused and are undetermined;

201 and further, that the accused has given bail in the sum of $10,000 for his appearance on trial within the eastern district of New York, and by the terms of said bond, has agreed to abide the further order of the circuit court of the United States for the eastern district of New York.

(10.) That to hold the accused to await the order of removal is a violation of the constitutional rights of the accused, in that to so hold him is to deprive him of his liberty without due process of law.

And upon each of the grounds already urged.

Does your honor care to receive a brief upon the motions to dismiss?

The COMMISSIONER: I do not think it is necessary, Mr. Seabury.

At the request of the district attorney, an adjournment was granted by the commissioner to June 29th, 1904, at 10:30 a. m.

202 BOROUGH OF BROOKLYN, *June* 29, 1904.

Hearing resumed before U. S. Commissioner B. Lincoln Benedict.

Appearances.

Wm. J. Youngs, Esq., U. S. attorney, for the Government.
Wm. M. Seabury, Esq., for the defendant.

No further evidence being offered, testimony closed.

The commissioner denied motions to discharge the defendant. Exception taken by Mr. Seabury.

Defendant committed in default of bail, to await order of district judge for removal.

203 Before B. L. Benedict, United States Commissioner for the Eastern District of New York.

THE UNITED STATES OF AMERICA
vs.
GEORGE W. BEAVERS.

The President of the United States to Charles J. Haubert, the marshal of the United States for the eastern district of New York, and to his deputies or any of them, Greeting:

Whereas, the above named defendant George W. Beavers has been arrested, and brought before me this day upon a warrant of arrest, charged upon oath with having committed an offence against the laws of the United States, in this viz.: That at Washington in the District of Columbia on the 11th day of July, 1901, he being then and there an officer of the United States and an agent thereof in the employ of the Post Office Department did unlawfully receive and accept from one W. Scott Towers a valuable consideration that is to say a draft on the Fourth National Bank of New York City for the sum of $350 with intent that the decision and action of said Beavers should be influenced in a matter then pending or to be brought before him in his official capacity for consideration, as by complaint in my office may more fully, and at large appear; and it appearing to me that there is probable cause to believe that the offence with which the defendant is so charged has been committed and the said defendant not having given sufficient bail as re-
204 quired by me, the said U. S. commissioner, in the sum of ten thousand dollars to appear for trial in the said District of Columbia.

Now therefore, you are hereby commanded in the name and by the authority of the United States of America, to take the said defendant into your custody and him safely keep, until he shall be again brought for examination or discharged according to law.

Witness my hand and seal this 29th day of June, 1904.

[L. S.] B. LINCOLN BENEDICT,
U. S. Commissioner.

Endorsed: Commitment. Filed ——.
[Endorsed:] Commitment.

205 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the borough of Brooklyn, city of New York, on the fifth day of July, A. D. one thousand nine hundred and four.

Present: The Honorable Edward B. Thomas, district judge.

In the Matter of the Application of GEORGE W. BEAVERS for Writs of *Habeas Corpus* and Certiorari.

A writ of *habeas corpus* having been issued out of this court herein upon a petition of George W. Beavers, verified the thirtieth day of June, 1904, which writ of *habeas corpus* was dated the thirtieth day of June, 1904, directed to the marshal of the United States for the eastern district of New York, commanding him, as the person having the custody of the body of the above-named George W. Beavers, to produce the body of the said George W. Beavers before the United States district court for the eastern district of New York, together with the time and cause of the imprisonment and detention of the said George W. Beavers at a stated term of said court, to be held in the Post Office building, city of New York, borough of Brooklyn, on the thirtieth day of June, 1904, at 9:30 o'clock in the forenoon of that day, together with the said writ of *habeas corpus*, and the said George W. Beavers having been duly produced at that time in said court by the said Charles J. Haubert, United States marshal aforesaid, and the said George W. Beavers having been remanded to the custody of the said Charles J. Haubert as such United States marshal pending the decision upon said writ of *habeas corpus*, and a return to said writ of *habeas corpus*, duly verified the first day of July, 1904, having been filed by said United States marshal upon the first day of July, 1904, and a hearing having been had upon the said application, and the proceedings having been adjourned until this day,

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And a writ of certiorari having also issued out of this court upon the said verified petition of George W. Beavers, which writ of certiorari was dated the thirtieth day of June, 1904, and was directed to B. Lincoln Benedict, United States commissioner for the eastern district of New York, commanding him to return before a stated term of the district court of the United States for the eastern district of New York, to be held in the Post Office building, in the city of New York, borough of Brooklyn, on the thirtieth day of June, 1904, at 9:30 o'clock in the forenoon of that day, all proceedings had and taken before the said commissioner against the said George W. Beavers under and pursuant to a warrant issued by the said commissioner on the third day of June, 1904, upon a complaint of one Frank E. Little, and to have then and there the said writ of certiorari, and the said B. Lincoln Benedict, as said commissioner as aforesaid, having, upon said thirtieth day of June, 1904, duly returned into court the said writ of certiorari, together with a return by the said B. Lincoln Benedict as such United States commissioner, dated the thirtieth day of June, 1904, to which return was attached the various papers received by said commissioner and the testimony taken upon the hearing under and pursuant to the warrant hereinbefore mentioned, which papers are hereinafter recited and which were filed as a part of said return

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upon the said thirtieth day of June, 1904, and a hearing having been had upon said writ of certiorari and upon said return, and the proceedings thereon having been adjourned until this day,

Now, upon reading the said petition of George W. Beavers verified the thirtieth day of June, 1904, and filed in the office of the clerk of this court upon that day, and the papers annexed to said petition and made a part thereof, called Exhibits One to Twelve, and the writ of *habeas corpus* issued upon said petition upon the thirtieth day of June, 1904, and the return to said writ, verified the first day of July, 1904, all of which papers are on file in the office of the clerk of this court,

And also, upon reading the said petition of the said George W. Beavers, and the writ of certiorari thereon issued upon the thirtieth day of June, 1904, the return to said writ, dated the thirtieth day of June, 1904, the minutes taken by the United States commissioner upon the various hearings before him attached to and filed with said return, the original complaint of Frank E. Little, verified the first day of June, 1904, and the warrant issued upon said
208 complaint by the said B. Lincoln Benedict upon the third day of June, 1904, together with the endorsements and commitments thereon, and a warrant of commitment issued by said commissioner, and a copy of an original warrant of commitment issued to said marshal upon the twenty-ninth day of June, 1904, by the said B. Lincoln Benedict, United States commissioner, and the original copy of the stenographer's minutes of the various hearings before said commissioner, together with the exhibits, all of which are attached to and made a part of said return and filed therewith, all of which papers are now on file in the office of the clerk of this court, and due deliberation having been had thereon, and it appearing that the said Charles J. Haubert, as such United States marshal, has the custody, and, at the time of receiving the said writ of *habeas corpus* and making return thereof, had the custody of the said George W. Beavers, by virtue of a warrant of arrest issued to said United States marshal by B. Lincoln Benedict, United States commissioner for the eastern district of New York, which warrant is dated the third day of June, 1904, and by virtue of the commitments thereon endorsed, and especially the commitment thereon endorsed on the twenty-ninth day of June, 1904, by said commissioner, and the original warrant of commitment hereinbefore referred to, issued by said B. Lincoln Benedict upon said twenty-ninth day of June, 1904, to the said United States marshal, which warrant of June third, 1904, directed the arrest and taking into custody of the said George W. Beavers upon the verified complaint of Frank E. Little,
209 recited in said warrant and hereinbefore referred to, and that the said George W. Beavers was duly arrested and taken into custody by virtue and under the authority of the said warrant, and upon his being arraigned before the said B. Lincoln Benedict, United States commissioner as aforesaid, and hearings having been had therein, and the said United States commissioner having ren-

dered his decision that there was probable cause to believe that the offence with which the defendant was charged had been committed and that the said defendant should be held for trial in the District of Columbia, in default of the amount of bail which had been fixed by said commissioner, the said George W. Beavers was duly committed to the custody of the said United States marshal to safely keep until the said George W. Beavers should be ordered by the district judge to be removed to the District of Columbia for trial or until he should be discharged according to law, and it also appearing to my satisfaction that the said George W. Beavers is not restrained of his liberty without due process of law but that the said arrest and commitment and the proceedings upon which said commitment was made were in all respects properly and legally had, and that the said marshal had authority to arrest the said George W. Beavers under the said warrant, which warrant had been properly issued, and that the commissioner had jurisdiction to entertain said proceedings and over the subject-matter of the said complaint and to issue the said warrant and to hold hearings in said proceedings and to receive evidence therein against the said petitioner and to hold him for trial in the District of Columbia and to require bail of the said George W. Beavers or to hold him in default thereof, and that the said acts were not in violation of any of the rights insured and guaranteed to the said George W. Beavers under the Constitution of the United States of America.

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And it also appearing to the satisfaction of this court that the objections raised by the said George W. Beavers to the proceedings before the said commissioner, on the ground that the said commissioner was without jurisdiction, should be overruled, and that upon the record produced herein by the said United States commissioner of the proceedings had before him, there appears to be probable cause that the offence with which the said defendant George W. Beavers was charged before said United States commissioner, had been committed as charged and that the decision of the said United States commissioner in holding the said George W. Beavers for trial in said District of Columbia, the district in which said offence was committed, was correct and based upon and justified and supported by the evidence taken in the said proceedings, and that the warrant of commitment made by the said commissioner on the said twenty-ninth day of June, 1904, was therefore properly made and issued to said United States marshal, and that the said George W. Beavers is legally held and restrained of his liberty by the said United States marshal thereunder, and that the said writ of *habeas corpus* and the said writ of certiorari should, and each of them should be dismissed,

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Now, upon hearing William M. Seabury, Esquire, of counsel on behalf of said petitioner George W. Beavers, in support of said motions, the said George W. Beavers appearing by Morgan & Seabury, his attorneys, and after hearing William J. Youngs, Esquire, United States attorney for the eastern district of

New York, appearing as attorney for the United States, in opposition thereto, it is

Ordered, that the motions on said writs of *habeas corpus* and certiorari to discharge the said George W. Beavers from the custody of the said United States marshal, be and they hereby are in all respects denied, and that the said writ of *habeas corpus* be discharged, and it is

Further ordered, that the said writ of certiorari directed to the said B. Lincoln Benedict, United States commissioner, be, and it hereby is in all respects dismissed, and the said George W. Beavers is hereby remanded to and left in the custody and control of the said Charles J. Haubert as United States marshal for the eastern district of New York, to be held under said warrant of commitment of June twenty-ninth, 1904.

EDWARD B. THOMAS, *U. S. J.*

Endorsed: Order dismissing writs. Filed and entered the 5th day of July, 1904.

[Endorsed:] Order dismissing writs Filed and entered July 5, 1904.

212 District Court of the United States for the Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for Writs of *Habeas Corpus* and Certiorari.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, and B. Lincoln Benedict, United States Commissioner in and for the Eastern District of New York.

The petition of the above named petitioner, George W. Beavers, for an order allowing an appeal to the Supreme Court of the United States from the final order hereinbefore entered in this case.

George W. Beavers, the petitioner and appellant above named, feeling himself aggrieved by the final order heretofore made and entered by this court in this case on the 5th day of July, 1904, whereby a writ of *habeas corpus* directed to Charles J. Haubert, United States marshal, in and for the eastern district of New York, requiring the said marshal to bring and have your petitioner before this court together with the time and cause of his detention forthwith, for such action as might be proper in the premises, be and the same is hereby dismissed and discharged.

213 Now comes by Morgan & Seabury, his solicitors and counsel and petitions this court for an order allowing your said petitioner to prosecute and appeal from such final order to the Supreme Court of the United States under and according to the laws of the United States in such behalf made. Your petitioner is advised by counsel that there are grave doubts as to whether the arrest and detention of the petitioner referred to in the petition and exhibits attached thereto has not infringed the constitutional rights of your petitioner; that the commitment of your said petitioner and the restraint of his person referred to in said petition is without authority of law; and that the said United States marshal by whom your said petitioner was arrested as set forth in the said petition was without right or authority to arrest your petitioner and that the said United States commissioner before whom your said petitioner was arraigned as set forth in the said petition, has no jurisdiction to entertain any proceedings in respect of your said petitioner, or to find probable cause to believe your petitioner guilty of a crime, or to require bail of your said petitioner or commit him in default thereof, or commit him to await the order of the district judge, and that your petitioner desires in good faith to submit the constitutional questions and other questions involved, to the Supreme Court of the United States for their determination.

Your petitioner will ever pray.

Dated July 5, 1904.

GEORGE W. BEAVERS.
By MORGAN & SEABURY,
Attorneys for Petitioner.

Office & P. O. address, 290 Broadway, borough of Manhattan, N. Y. city.

214 UNITED STATES OF AMERICA, *Eastern District of New York,* } ss:

George W. Beavers being duly sworn, says that he is the petitioner above named and that the foregoing petition is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

GEORGE W. BEAVERS.

Sworn to before me this 5th day of July, 1904.

[SEAL.] PERCY G. B. GILKES,
Notary Public, Kings Co., N. Y.

The foregoing petition on appeal granted and bail allowed. Bond for costs is fixed at two hundred and fifty ($250.) dollars.

Done in open court this 5th day of July, 1904.

EDWARD B. THOMAS, *U. S. J.*

Endorsed: Petition of appeal. Filed July 5, 1904.

215 In the Supreme Court of the United States.

In the Matter of the Application of GEORGE W. BEAVERS for Writs of *Habeas Corpus* and Certiorari.

GEORGE W. BEAVERS, Appellant, *against* CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, and B. Lincoln Benedict, United States Commissioner in and for the Eastern District of New York.	Assignment of Errors.

Now comes the petitioner, George W. Beavers, by Morgan & Seabury, his counsel, in connection with his petition of appeal to the Supreme Court of the United States from an order of the district court of the United States in and for the eastern district of New York, entered therein on the 5th day of July, 1904, dismissing and discharging the writ of *habeas corpus* and makes and files the following assignment of errors:

The court erred:

1st. In dismissing and discharging the petitioner's writ of *habeas corpus* and remanding him to the custody of the marshal.

2nd. In refusing to discharge the said petitioner.

3rd. In holding that the arrest and restraint of the peti-
216 tioner's liberty is legal.

4th. In holding that your petitioner was not then and there entitled to be discharged from the custody of the marshal.

5th. In holding that the restraint of your petitioner is not a violation of his constitutional right not to be deprived of his liberty without due process of law, guaranteed to him by the Constitution of the United States, article fifth of the amendments thereof.

6th. In holding that the said commissioner at the time of the arrest or arraignment of your said petitioner or at any other time had any jurisdiction, right or authority to issue a warrant for the arrest of your petitioner, to require bail of your petitioner or commit your said petitioner in default of such bail.

7th. In holding that your petitioner was in custody of the said Charles J. Haubert, United States marshal in and for the eastern district of New York, and deprived of his liberty by him by due process of law.

8th. In holding that the arrest and detention of your petitioner was not in violation of his constitutional rights.

9th. In holding that the indictment introduced as evidence against your petitioner discloses sufficient facts to show that your petitioner was guilty of a crime.

10th. In holding that the said indictment was competent as evi-

dence, when the testimony of the witnesses constituting the
217 primary evidence on which the said indictment was found was introduced before the said commissioner.

11th. In holding that the probative force of the said indictment was not utterly destroyed by the direct and positive testimony adduced on behalf of the petitioner.

12th. In holding that there was probable cause to believe the petitioner guilty of a crime against the United States in the District of Columbia.

13th. In holding that the commitment issued by B. Lincoln Benedict, Esq., United States commissioner in and for the eastern district of New York, charges the petitioner with the commission of a crime against the United States in the District of Columbia.

14th. In holding that there was before the said commissioner any evidence of probable cause to believe your petitioner guilty of a crime.

15th. In holding that the said indictment was conclusive proof of probable cause.

16th. For other errors appearing in the record.

By reason whereof the petitioner prays that the said order dismissing and discharging the said writ of *habeas corpus* be reversed and that your petitioner be discharged from custody.

Dated, the 5th day of July, 1904.

GEORGE W. BEAVERS,
By B. T. MORGAN &
WM. M. SEABURY,
His Attorneys and Counsellors.

MORGAN & SEABURY,
Counsel for Petitioner.

Office & P. O. address, 290 Broadway, borough of Manhattan, N. Y. city.

Endorsed: Assignment of errors. Filed July 5, 1904.

218 In the Supreme Court of the United States.

In the Matter of the Application of GEORGE W. BEAVERS for Writs of *Habeas Corpus* and Certiorari.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, and B. Lincoln Benedict, United States Commissioner in and for the Eastern District of New York.

UNITED STATES OF AMERICA,
Eastern District of New York, } ss:

Be it remembered that on the 5th day of July, 1904, before me Joseph G. Cochran United States commissioner in and for the eastern district of New York, personally came George W. Beavers as principal, and John McCormack & Henrietta A. Sedgwick as sureties, and severally acknowledged themselves to owe to the United States of America, that is to say, the said George W. Beavers the sum of $5000.00 *dollars* and the said John McCormack the sum of $5000.00 and the said Henrietta A. Sedgwick the sum of $5,000.00 *dollars*, separately to be made and levied on their respective goods, chattels, lands and tenements to the said United States if default shall be made in the condition following, to wit:

Whereas the said George W. Beavers was detained in the custody of Charles J. Haubert, United States marshal in and for
219 the eastern district of New York under a commitment issued by B. Lincoln Benedict, Esq., United States commissioner in and for the eastern district of New York, on the 29th day of June, 1904.

Whereas the said George W. Beavers made an application to the United States district court before Honorable Edward B. Thomas, district judge on the 30th day of June, 1904, for a writ of *habeas corpus* directed to said Charles J. Haubert, Esq., requiring said marshal to bring George W. Beavers before said court together with the cause of his detention and for a writ of certiorari in aid thereof, directed to B. Lincoln Benedict, Esq., commanding him to return all proceedings had before him against the said George W. Beavers to said court; and

Whereas the said Charles J. Haubert on the 30th day of June 1904, did make a return to said writ and did produce the said George W. Beavers before the said district court of the United States and the said B. Lincoln Benedict did on the 30th day of June 1904 return all proceedings had before him, pursuant to the direction of said writ;

Whereas on the 5th day of July, 1904, the said Honorable Edward

B. Thomas, did make his final order dismissing the said writ of *habeas corpus*, and

Whereas the said George W. Beavers has appealed from said final order to the Supreme Court of the United States, and

Whereas the said Honorable Edward B. Thomas, United States district judge did thereupon allow such appeal and ordered
220 that the said George W. Beavers be enlarged upon bail in the sum of $5,000.00 *dollars* for his appearance to answer the exigency and determination of said appeal and to personally abide the final decision and determination of the said Supreme Court of the United States in that behalf.

Now, therefore, the condition of this obligation is such that if the said George W. Beavers shall duly, personally appear in the United States district court for the eastern district of New York, to answer the exigency and determination of said appeal and personally abide the final decision and determination of the said Supreme Court of the United States and of said district court of the United States, upon the mandate of the said Supreme Court of the United States and obey and abide the orders of said district court of the United States and not depart without leave, upon the conditions aforesaid and upon the entry of said orders upon said appeal, then this recognizance to be void, otherwise to remain in full force and virtue.

HENRIETTA A. SEDGWICK.
GEORGE W. BEAVERS.
JOHN McCORMACK.

Taken and acknowledged before me the day and year first above written.

J. G. COCHRAN,
U. S. Commissioner, E. D. of N. Y.

EASTERN DISTRICT OF NEW YORK, *ss:*

Henrietta A. Sedgwick and John McCormack being duly severally and each of them *and* sworn, says that they are worth each the sum of $10,000 *dollars* over and above all their just debts and liabilities, in property not exempt from execution.

JOHN McCORMACK.
HENRIETTA A. SEDGWICK.

Sworn to before me this 5th day of July, 1904.

J. G. COCHRAN,
U. S. Commissioner, E. D. of New York.

Recognizance approved as to form, amount and sufficiency.

EDWARD B. THOMAS, *U. S. J.*

Endorsed: Bond pending appeal. Filed July 5, 1904.

221 In the Supreme Court of the United States.

In the Matter of the Application of GEORGE W. BEAVERS for Writs of *Habeas Corpus* and Certiorari.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, and B. Lincoln Benedict, United States Commissioner in and for the Eastern District of New York.

Know all men by these presents, that we, George W. Beavers as principal and John McCormack and Henrietta A. Sedgwick as sureties, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty ($250.) dollars to be paid to the United States to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 5th day of July, 1904.

Whereas lately, to wit, on the 5th day of July, 1904, at a district court of the United States in and for the eastern district of New York, in a proceeding therein pending an order was entered dismissing the writ of *habeas corpus* obtained on the application of the above named petitioner and the said petitioner having duly
222 obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the clerk's office of the district court to review the same,

Now, the condition of the above obligation is such that if the said petitioner George W. Beavers shall prosecute said appeal to effect and shall answer all costs if he fails to make the said appeal good, then this obligation to be void, else to remain in full force and effect.

GEORGE W. BEAVERS. [L. S.]
HENRIETTA A. SEDGWICK. [L. S.]
JOHN McCORMACK. [L. S.]

Sealed and delivered and taken and acknowledged this 5th day of July, 1904, before me

J. G. COCHRAN,
United States Commissioner, Eastern District of New York.

UNITED STATES OF AMERICA, }
Eastern District of New York, } ss:

John McCormack and Henrietta A. Sedgwick each being duly sworn for himself says, that he is worth more than the sum of five

hundred ($500.) dollars over and above all his just debts and liabilities.

HENRIETTA A. SEDGWICK.
JOHN McCORMACK.

Sworn to before me this 5th day of July, 1904.

J. G. COCHRAN,
U. S. Commissioner, E. D. of New York.

223 Approved as to form, amount and sufficiency.

EDWARD B. THOMAS, *U. S. J.*

Endorsed: Bond for costs on appeal. Filed July 5, 1904.

224 At a stated term of the district court of the United States in and for the eastern district of New York, held at the United States court house and post office building, in the borough of Brooklyn, city of New York, on the 5 day of July, 1904.

Present: Hon. Edward B. Thomas, district judge.

In the Matter of the Application of GEORGE W. BEAVERS for Writs of *Habeas Corpus* and Certiorari.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, and B. Lincoln Benedict, United States Commissioner in and for the Eastern District of New York.
} Order as to Custody and Bail.

An appeal having been duly taken to the Supreme Court of the United States by the above named petitioner and appellant, from an order this day entered herein, dismissing a writ of *habeas corpus*.

Now, on motion of Morgan & Seabury, it is

Ordered that pending the said appeal, the custody of the said George W. Beavers shall in this proceeding not be disturbed and that he remain in the custody of Charles J. Haubert, United States marshal in and for the easter district of New York, and be
225 kept and detained in such custody pending and until the determination of said appeal by the said Supreme Court of the United States and the further order of the court thereon, unless he give the bail hereinafter required.

EDWARD B. THOMAS,
U. S. District Judge.

On application of the appellant, it is ordered that Joseph G. Cochran, Esq., take recognizance in the sum of $5000.00 *dollars* for the

appearance of the appellant, George W. Beavers, on the entry of the final order in the United States district court upon the mandate of the Supreme Court of the United States.

Dated the 5th day of July, 1904.

EDWARD B. THOMAS,
U. S. District Judge.

Endorsed: Order as to custody and bail. Filed and entered the 5th day of July, 1904.

[Endorsed:] Order as to custody and bail. Filed and entered July 5, 1904.

226 District Court of the United States for the Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for Writs of *Habeas Corpus* and Certiorari.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, and B. Lincoln Benedict, Esq., United States Commissioner in and for the Eastern District of New York, Appellees.

SIR: Please take notice that George W. Beavers, the petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 5th day of July, 1904, dismissing his writ of *habeas corpus* and from each and every part of said order.

Dated, Brooklyn, the 5th day of July, 1904.

Yours &c., MORGAN & SEABURY,
Attorneys and Counsellors for Petitioner.

Office & P. O. address, 290 Broadway, borough of Manhattan, New York city.

To Hon. William J. Youngs, Esq., United States district attorney in and for the eastern district of New York.

227 To Charles J. Haubert, Esq., United States marshal in and for the eastern district of New York.

To B. Lincoln Benedict, Esq., United States commissioner in and for the eastern district of New York.

To Richard P. Morle, Esq., clerk of the district court of the United States for the eastern district of New York.

Endorsed: Notice of appeal. Filed July 5, 1904.

228 United States District Court for the Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for Writs of *Habeas Corpus* and Certiorari.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York; B. Lincoln Benedict, United States Commissioner in and for the Eastern District of New York, Appellees.

Due service on the 6th day of July, 1904, of a true copy of each of the foregoing papers on appeal, filed by the appellant in the above entitled cause, namely, petition of appeal, assignment of errors, order as to custody and bail, bond pending appeal, bond for costs on appeal, citation and notice of appeal is hereby admitted, on behalf of the appellees.

Dated, July 6th, 1904.

WM. J. YOUNGS,
U. S. Attorney.

Endorsed: Admission of service. Filed August 4, 1904.

229 UNITED STATES OF AMERICA, } ss:
Eastern District of New York, }

I, Richard P. Morle, clerk of the district court of the United States of America for the eastern district of New York in the second judicial circuit, do hereby certify that the foregoing pages numbered from 1 to 228 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause entitled:—In the matter of the petition of George W. Beavers for writs of *habeas corpus* and certiorari, George W. Beavers appellant, against Charles J. Haubert, United States marshal in and for the eastern district of New York and others, appellees, as the same remain of record and on file in my office; and that it is a correct transcript therefrom and of the whole of the originals.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the borough of Brooklyn, in the city of New York, in the eastern district of New York, in the second circuit, this 19th day of August in the year of our Lord one thousand nine hundred and four and of the Independence of said United States, the one hundred and twenty-ninth.

{ Seal District Court of the United States, Eastern District of New York. }

RICHARD P. MORLE, *Clerk,*
By PERCY G. B. GILKES, *Deputy Clerk.*

230 District Court of the United States, Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for Writs of *Habeas Corpus* and Certiorari.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, and B. Lincoln Benedict, United States Commissioner in and for the Eastern District of New York.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Hon. William J. Youngs, United States district attorney for the eastern district of New York; Charles J. Haubert, Esq., United States marshal in and for the eastern district of New York; B. Lincoln Benedict, Esq., United States commissioner in and for the eastern district of New York, and Richard P. Morle, Esq., clerk of the district court of the United States for the eastern district of New York:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the city of Washington within thirty (30) days from the date of this writ, pursuant to an appeal duly allowed by the district court for the eastern district of New York and filed in the clerk's office of said court on the 5 day of July, A. D. 1904; in a cause entitled In the matter of the
231 petition of George W. Beavers for writs of *habeas corpus* and certiorari, George W. Beavers, appellant against Charles J. Haubert, United States marshal in and for the eastern district of New York and B. Lincoln Benedict, Esq., United States commissioner in and for the eastern district of New York, appellees, to show cause, if any, why the final order of the district court rendered against the said appellant as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward B. Thomas, judge of the district court of the United States, this 5 day of July, 1904.

EDWARD B. THOMAS, *U. S. J.*

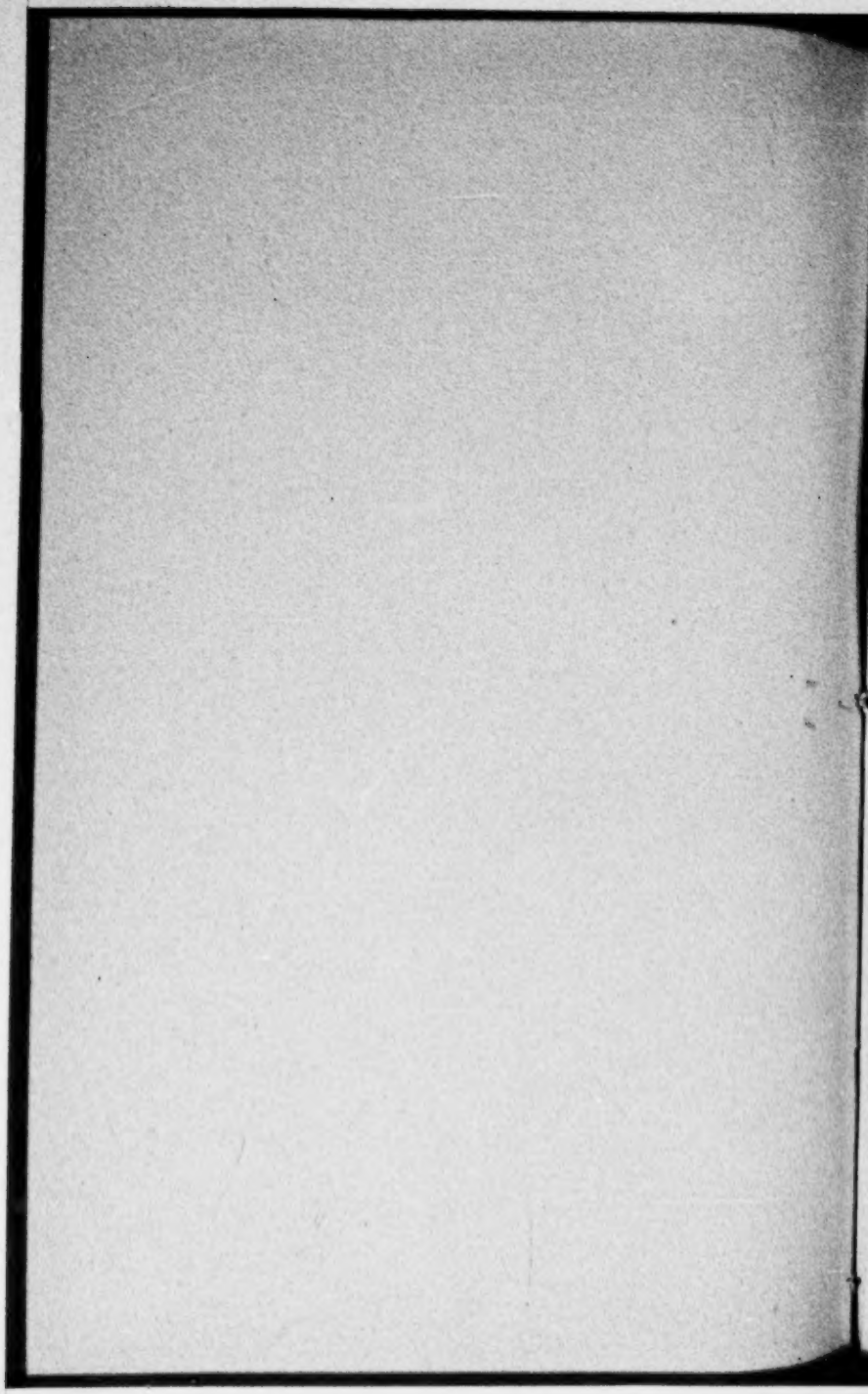
Attest:

{Seal District Court of the United States, Eastern District of New York.}

RICHARD P. MORLE, *Clerk*,
By PERCY G. B. GILKES, *Deputy Clerk*.

232 [Endorsed:] United States district court, eastern district of New York. George W. Beavers, appellant, against Charles J. Haubert, appellee. Original Citation on appeal. Morgan & Seabury, attorneys for appellant, No. 290 Broadway, borough of Manhattan, New York, N. Y.

Endorsed on cover: File No. 19,454. E. New York D. C. U. S. Term No. 354. George W. Beavers, appellant, vs. Charles J. Haubert, United States marshal in and for the eastern district of New York, *et al.* Filed August 23d, 1904. File No. 19,454.



(19,455.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 355.

GEORGE W. BEAVERS, APPELLANT,

vs.

CHARLES J. HAUBERT, UNITED STATES MARSHAL IN AND FOR THE EASTERN DISTRICT OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 27, 1904.

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1 United States Circuit Court for the Eastern District of New York.

To the circuit court of the United States for the eastern district of New York:

The petition of George W. Beavers respectfully shows:

I. That your petitioner is a citizen of the United States and is imprisoned and restrained of his liberty in the custody of one, Charles J. Haubert, marshal of the United States, within and for the eastern district of New York, in the borough of Brooklyn, city of New York, eastern district of New York, and within the space of twenty miles therefrom, and held under color of authority of the United States, as evidenced by a warrant to apprehend, dated the 3rd day of June, 1904, and signed by B. Lincoln Benedict, Esq., a United States commissioner in and for the eastern district of New York, and has been committed and is detained under and by virtue of the said warrant and not by virtue of any judgment, decree or final order of any court of the United States; a copy of such warrant being hereto annexed and marked Exhibit "I" and made part hereof.

II. That the cause or pretense of the imprisonment of your petitioner, according to the best of his knowledge and belief, is that a complaint on removal was made under oath the first day of June, 1904, charging or purporting to charge your petitioner with the commission of a crime against the United States in the District of Columbia; a copy of which complaint is annexed hereto and marked

2 Exhibit "II" and made part hereof. That said complaint is verified by one, Frank E. Little.

That in said complaint the said Frank E. Little referred to a copy of a bench warrant issued by Hon. Harry M. Clabaugh, chief justice of the supreme court of the District of Columbia, on the 3rd day of November, 1903, a copy of which is herewith annexed and marked Exhibit "III" and made part hereof, and a paper purporting to be an exemplified copy of an indictment alleged to have been found in the city of Washington, District of Columbia, by the grand jury thereof at the April term thereof, purporting to charge the petitioner, George W. Beavers, with the commission of a crime against the United States, a copy of which indictment is hereto annexed and marked Exhibit "IV" and made part hereof. And that the cause or pretense of the imprisonment and restraint of your petitioner, is that a charge has been made against him, as set forth in the said documents hereinbefore enumerated.

III. That your petitioner is restrained of his liberty without due process of law; that the arrest under the process hereinbefore referred to is wholly void and without force or effect. That said restraint is illegal and in violation of the rights insured and guaranteed

to him under the Constitution of the United States of America, article V of the amendments thereof.

That the said marshal in and for the eastern district of New York had no authority to arrest your petitioner under the said warrant, and the said United States commissioner had no jurisdiction
3 to issue the same and that the said commissioner had no jurisdiction to require bail of your said petitioner, or to hold him in default thereof.

IV. That your petitioner has duly objected to the proceedings before the said commissioner on the ground that the said commissioner is without jurisdiction in the premises and that he has not given bail in accordance with the requirements of the said commissioner, and that he is in the actual custody of the United States marshal in and for the eastern district of New York.

V. That the illegality of the arrest and restraint of the liberty of your petitioner arises from the following facts:

That on the 16th day of July, 1903, two indictments were found against your petitioner by the grand jury of the United States in and for the eastern district of New York, charging him with a violation of sections 1781 and 1782 of the Revised Statutes respectively, and that on the 25th day of July, 1903, an indictment was found by the said grand jury against your petitioner, charging him with a violation of section 1781 of the Revised Statutes. That on the 3rd day of September 1903, a bench warrant was issued thereon, a copy of which is hereto annexed, and marked Exhibit "VIII" and made part hereof. That removal proceedings were instituted against your petitioner in the southern district of New York, under the indictment found on July 25th, 1903, as aforesaid, and that on November 10th, 1903, a warrant of removal was issued by the Hon.
4 George C. Holt, a district judge of the United States in and for the southern district of New York, directing the removal of your petitioner to the eastern district of New York, for the purpose of answering to the said indictments. A copy of which is hereto annexed, marked Exhibit "VII" and made part hereof.

That on or about the 23rd day of May, 1904, an order was entered in the circuit court of the United States for the southern district of New York, directing the said George W. Beavers to surrender himself on or before the 25th day of May, 1904, into the custody of William Henkel, United States marshal for the southern district of New York, for the purpose of removal to the eastern district of New York, under the warrant of removal issued on November 10th, 1903, as aforesaid, by the Hon. George C. Holt. That pursuant to said order, the said George W. Beavers did on the 24th day of May, 1904, surrender himself into the custody of the said William Henkel, for the purposes aforesaid and did on the 24th day of May, 1904, enter into a recognizance before the Hon. Geo. B. Adams, one of the judges of the district court of the United States, for the southern district of New York, in the penal sum of $10,000. with one James R. Brown, as surety, for his appearance at the next regular term of the

United States circuit court for the eastern district of New York, a copy of which recognizance is hereto annexed and marked Exhibit "V" and made part hereof. That on the 28th day of May, 1904, William J. Youngs, Esq., United States district attorney in and for the eastern district of New York, notified the petitioner and his surety to appear before the United States
5 circuit court for the eastern district of New York, on the first day of June, 1904, for the purpose of pleading to said indictments, a copy of which notice is hereto annexed and marked Exhibit "VI" and made part hereof. That on the first day of June, 1904, your petitioner duly appeared before the United States circuit court for the eastern district of New York, and his arraignment for the purpose of pleading to three indictments found against him by the grand jury for the eastern district of New York, as aforesaid, was moved by the said United States district attorney. That the court accorded the petitioner one week's time to move upon and plead to the said indictments. That on the 7th day of June, 1904, notice of motion to quash the said indictments and affidavits and exhibits relating thereto, and notice of motion for a bill of particulars in respect of each of the said indictments were served upon William J. Youngs, Esq., United States district attorney, as aforesaid, returnable on the 8th day of June, 1904, at ten o'clock a. m. That on the 8th day of June, 1904, your petitioner duly appeared before the said circuit court in accordance with the directions of Hon. Edward B. Thomas, a district judge of the United States in and for the eastern district of New York, prepared to move upon and plead to the said indictments. That at that time the said district attorney refused to proceed further with the proceedings in reference to the said indictments; but stated that it was his intention to institute proceedings for the removal of the accused to the
6 District of Columbia, under the complaint, warrant and other papers hereinbefore referred to. That thereupon the court declined to proceed further with reference to the said indictments and adjourned all further proceedings thereon until the 13th day of June, 1904, and on that day further adjourned all further proceedings till the 18th day of June, 1904, and directed your petitioner to appear on that day and enlarged him until that date, upon the recognizance before entered into and hereto annexed and marked Exhibit "V." That the said recognizance is still subsisting and is of full force and effect and has not been cancelled or annulled. That the said motions in respect of the said indictments are still pending undetermined in the circuit court of the United States for the eastern district of New York, as aforesaid, and that the said indictments have not been quashed or nolle prossed; but still remain in full force and effect. That your petitioner is ready to proceed with the motions in respect of the said indictments and if such motions are overruled, to plead thereto.

VI. That as your petitioner is informed by counsel and verily believes he has a right to remain in the eastern district of New York

until criminal justice therein is satisfied and until he is tried upon the said indictments, or they are quashed or otherwise disposed of. That his arrest for purposes of removal to the District of Columbia is in violation of his constitutional right not to be restrained
7 without due process of law and his other constitutional rights and that the said commissioner has no jurisdiction or authority to arrest, bail or commit your petitioner while he is still in the custody of the United States, for the purpose of pleading to the indictments found in the eastern district of New York, as evidenced by the recognizance hereinbefore referred to and hereto annexed.

Wherefore your petitioner prays that a writ of *habeas corpus* issue forthwith, directed to the person having your petitioner in custody, commanding him to bring the body of your petitioner before this court forthwith for such action thereon as may be proper in the premises.

Dated, Brooklyn, June 17th, 1904.

GEORGE W. BEAVERS, *Petitioner.*

MORGAN & SEABURY,
Attorneys for Petitioner.

Office & P. O. address, 290 Broadway, borough of Manhattan, New York city.

UNITED STATES OF AMERICA,
Eastern District of New York, County of Kings. }

George W. Beavers being duly sworn, deposes and says, that he has read the foregoing petition and knows the contents thereof, and that the same is in all respects true.

GEORGE W. BEAVERS.

Subscribed and sworn to before me this 13th day of June, 1904.

[L. S.] R. A. RANDALL,
Notary Public, Kings Co., N. Y., # 8.

Resworn to before me this 17 day of June A. D. 1904

R. A. RANDALL,
Notary Public, Kings Co., N. Y., # 8.

8 EXHIBIT I.

The President of the United States of America to the marshal of the United States for the eastern district of New York and to his deputies or any or either of them:

Whereas, complaint on oath has been made to me, charging that George W. Beavers, at Washington in the District of Columbia on

the 11th day of July in the year one thousand nine hundred and one being then and there an officer and agent of the Government in the employ of and under the Post Office Department of the United States did knowingly and unlawfully receive and accept an obligation for the payment of money from one W. Scott Towers who was then and there an agent of the Elliott and Hatch Book-typewriter Company, that is to say, a draft on the Fourth National Bank of New York City for the sum of $350.00 payable to the order of said Towers and by the said Towers endorsed for payment, with intent that the action or decision of said Beavers in a matter then pending or to be brought before him for consideration in his official capacity should be influenced thereby, as by copy of complaint hereto annexed may more fully appear, and contrary to the statutes of the United States in such behalf made and provided.

Now therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said George W. Beavers wherever he may be found, and bring his
9 body forthwith before me, or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with, for said offence, according to law.

Given under my hand and seal, this 3rd day of June in the year of our Lord one thousand nine hundred and four.

B. LINCOLN BENEDICT,
[L. S.] *United States Commissioner for the Eastern District of New York.*

10 EXHIBIT II.

Before Hon. B. Lincoln Benedict, U. S. Commissioner, Eastern District of New York.

In the Matter of the Complaint of THE UNITED STATES
vs.
GEORGE W. BEAVERS.

UNITED STATES OF AMERICA,
Eastern District of New York, County of Kings, } ss:

Frank E. Little being duly sworn, deposes and says that he is an inspector of the Post Office Department of the United States, and further says, on information and belief, that on the sixth day of October, in the year of our Lord nineteen hundred, and from thence until the first day of July, in the year of our Lord nineteen hundred and one, George W. Beavers, late of the city of Washington, in the said District of Columbia, at Washington aforesaid, in the said District, was an officer of the said United States and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of a department of

the Government thereof, that is to say, superintendent of salaries and allowances, in the office of the First Assistant Postmaster General of the said United States, in the Post-Office Department of the Government thereof, and during the period aforesaid did act as and perform the duties of such superintend-
11 ent of salaries and allowances; that on the said first day of July, in the year of our Lord nineteen hundred and one, and from thence until and on the twenty-fourth day of March, in the year of our Lord nineteen hundred and three, the said George W. Beavers was an officer of the said United States and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of a department of the Government thereof, that is to say, general superintendent of salaries and allowances, in the office of the said First Assistant Postmaster General of the said United States, in the Post-Office Department of the Government thereof, and during the last-mentioned period did act as, and perform, the duties of, such general superintendent; that by reason of his being such officer and person acting as aforesaid, under the law and the regulations theretofore and then pursuant to law prescribed and promulgated by the Postmaster-General of the said United States for the government of his department and the conduct of its officers and clerks, and in force during the said periods, he the said George W. Beavers was charged, amongst other things, with the consideration of orders and allowances for miscellaneous and incidental items of supplies, including furniture, and book-typewriting machines, called book-typewriters, for use in post-offices throughout the said United States, involving outlays and increases of expenditure of the moneys of the said United States appropriated by law for the service of the said Post-Office Department for the fiscal
12 years ending June thirtieth, nineteen hundred and one, June thirtieth, nineteen hundred and two, and June thirtieth, nineteen hundred and three, and also with procuring, in accordance with the methods provided by the said regulations and by law, from persons and corporations proposing to furnish the same, such supplies, furniture and book-typewriters for the use aforesaid, by open purchase or contract at the places and in the manner in which such supplies, furniture and book-typewriters were and are usually bought and sold between individuals, in case the public exigency did not require such purchases and contracts to be made by advertising for proposals respecting the same,—of the prescribing and promulgating of which said regulations he, the said George W. Beavers, during the periods aforesaid, there had notice; and that during the said periods, and by reason of his being and acting as such superintendent and general superintendent, it became and was the duty of the said George W. Beavers, when discharging the duties with which he was so charged as aforesaid, carefully to guard the interests of the said United States, to observe the laws thereof, and the regulations aforesaid, and to preserve those interests in considering and making allowances for and procuring such miscellaneous and inci-

dental items of supplies and furniture as aforesaid, and by all reasonable means and in the manner provided by law and the regulations aforesaid to secure terms as favorable to the said United States as possible when making contracts with and securing from persons and corporations proposing to furnish such supplies, furniture and book-
typewriters for the said Post-Office Department and for
13 the use aforesaid, involving expenditures of the moneys appropriated as aforesaid, and by all reasonable and lawful means to obtain by purchase or contract such supplies and furniture, for that department, out of the same moneys, as cheaply as possible; and that because, special trust and confidence were reposed in him by his superior officers the said Postmaster General and First Assistant Postmaster General, and by the persons for the time being acting as such superior officers, by reason of his being such officer and person as aforesaid, it then and there also became and was the duty of the said George W. Beavers, under the law and the said regulations, faithfully and truthfully to advise his said superior officers, or the persons acting as such, of and concerning all the matters requiring their supervision and notice and pertaining to the discharge of his, the said George W. Beavers' said duties, and to inform them truly and in good faith concerning all allowances, contracts, undertakings, orders, and purchases considered by him in the discharge of his said duties, and concerning all bills or accounts rendered against the said United States and the said Post-Office Department in connection with such allowances, contracts, undertakings, orders and purchases, and especially in connection with allowances, contracts, undertakings, orders and bills or accounts made, entered into and rendered in connection with the purchase of certain furniture and book-typewriters hereinafter mentioned; and that one W. Scott Towers, late of Washington aforesaid, during the periods aforesaid, was an agent of the
Elliott & Hatch Book Typewriter Company, a corpo-
14 ration theretofore organized under the laws of the State of New York, and then existing under that name and engaged in the business of manufacturing and selling certain book-typewriting machines, called book-typewriters and at divers times during the said first-mentioned period under the circumstances hereinafter set forth, did as such agent of the said corporation, sell and furnish a large number, to wit: fourteen, of such book-typewriters to the said Post-Office Department, at the price of two hundred dollars each, that is to say, one book-typewriter each for the post-office of the said United States at Columbia, South Carolina, East Liverpool, Ohio, Charleston, South Carolina, Helena, Montana, Rochester, New York; Kingston, New York; and Roanoke, Virginia, and seven book-typewriters for the post office of the said United States at Boston, Massachusetts, which said book-typewriters were so sold and furnished to the said Post-Office Department on divers days during the said first-mentioned period; and that during the said first-mentioned period, to wit, on the said sixth day of October, in the year of

our Lord nineteen hundred, the said George W. Beavers and W. Scott Towers did enter into and unlawful and corrupt agreement whereby the said W. Scott Towers, agent of the said corporation as aforesaid, undertook and promised on behalf of the said corporation to pay to him the said George W. Beavers, for the own personal use and benefit of him the said George W. Beavers, form time to time as the said corporation itself received payment therefor, and while he continued to be such officer and person acting in an official capacity under and by virtue of the authority of the said Post-Office Department as
15 aforesaid, the sum of twenty-five dollars out of each sum of two hundred dollars paid to the said corporation, out of the moneys appropriated as aforesaid, for purchasing the said book-typewriters for the said Post-Office Department; and that the said George W. Beavers afterwards, to wit, on the eleventh day of July in the year of our Lord nineteen hundred and one, during the last mentioned period, while he the said George W. Beavers was still an officer of the said United States as aforesaid, and a person acting for and on behalf of the said United States in an official capacity as aforesaid, and in pursuance of the said unlawful and corrupt agreement, at Washington, aforesaid in the said District of Columbia, unlawfully did receive from the said W. Scott Towers, agent of the said corporation, as aforesaid, a certain obligation for the payment of money, to wit, a draft dated that day, numbered 139946, drawn by the Citizen's National Bank of Washington City, in the said District of Columbia, upon the Fourth National Bank of New York City, New York, for the payment of the sum of three hundred and fifty dollars to the order of the said W. Scott Towers, and by the said W. Scott Towers endorsed in blank and this with intent on the part of him the said George W. Beavers, to have his decision and action on a matter then pending and thereafter to be brought before him in his said official capacity and in his place of trust influenced thereby to the detriment of the said United States, that is to say, to have his decision and action in the matter of then and thereafter making allowances for and procuring for the said Post-Office Department, in
16 the manner aforesaid, from the said corporation, book-typewriters of the kind aforesaid, otherwise than in the manner in which such articles are usually bought and sold between individuals, and not as cheaply as possible, and at a price greatly in excess of the price at which the same articles could and would have been procured for the said Post-Office Department if he the said George M. Beavers had honestly discharged his said duties and not entered into and executed the said unlawful and corrupt agreement with the said W. Scott Towers as aforesaid, that is to say, twenty-five dollars in excess upon each of the said book-typewriters,—and with intent on the part of him the said George W. Beavers to have his action in the matter of faithfully and truthfully advising his said superior officers, or the persons acting as such, of and concern-

ing the discharge of his said duties, influenced thereby adversely to his true duty and to the interests of the said United States, in such manner as to cause him to connive at and allow the fraud on the said United States involved in the said unlawful and corrupt agreement; all of which was against the peace of the United States of America, and their dignity, and contrary to the form of the statute of the said United States in such case made and provided, and all of which acts and facts and circumstances hereinbefore set forth are more particularly set forth and contained in an indictment against the said George W. Beavers duly found by a grand jury in the supreme court of the District of Columbia, holding a criminal court, for the April term, in the year of our Lord one thousand nine hundred and three, duly filed in open court in said court and Dis-
17 trict upon the fifth day of October nineteen hundred and three, an exemplified copy of which indictment is hereto annexed and marked Exhibit "A," and which is made a part of this complaint and to which for more particularity reference is hereby made; that at the said April term of the said supreme court of the District of Columbia, the grand jurors for the United States of America, inquiring in and for the said District of Columbia, duly found the indictment hereinbefore referred to, charging the said George W. Beavers with the offence hereinbefore set forth, that is to say, with the same offence contained and set forth, in said indictment, which indictment, as aforesaid, was duly filed in open court in said court and said District upon the said fifth day of October nineteen hundred and three, to which indictment reference has been heretofore and is hereby made and an exemplified copy of which is hereto attached and called Exhibit "A;" that after the filing of the said indictment and upon the third day of November in the year nineteen hundred and three, a bench warrant duly issued out of said supreme court of the District of Columbia, holding a criminal court, for the arrest of the said George W. Beavers, a duplicate of which original warrant is hereto attached, which is marked Exhibit "B."

Deponent further says that the said George W. Beavers has not been found within the said District of Columbia, and is not now within the said District of Columbia, but is within the eastern district of New York in the borough of Brooklyn, New York city, New York.

18 Deponent further says that the source of his information and the grounds of his belief as to the allegations hereinbefore stated to be alleged upon information and belief are the exemplified copy of the said indictment hereinbefore referred to and attached hereto as Exhibit "A" and the duplicate original of the said bench warrant hereto attached and marked Exhibit "B."

Deponent further says that he is personally acquainted with the said George W. Beavers and knows that he is the person mentioned and described in said indictment and charged with the offence therein set forth.

FRANK E. LITTLE, *P. O. Insp'r.*

Subscribed and sworn to before me this first day of June, 1904.

B. LINCOLN BENEDICT,
U. S. Commissioner, Eastern District of New York.

19 EXHIBIT III.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

THE UNITED STATES vs. GEORGE W. BEAVERS. } Criminal Number 23954. Indicted for Violation of the Section 5501, R. S. U. S.

The President of the United States to the United States marshal for the District of Columbia, Greeting:

You are hereby commanded to take the defendant George W. Beavers, if he is found in your district, and him to have before the criminal court for the said District of Columbia (immediately) to answer the United States touching the offence charged against him.

Hereof fail not, and have there then this writ so endorsed as to show how you have executed it.

Witness, the Honorable Harry M. Clabaugh, chief justice of said court, the 3d day of November, 1903.

[SEAL.]

J. R. YOUNG, *Clerk*,
By A. W. SMITH,
Assistant Clerk.

20 The warrant is endorsed as follows:

Criminal court No. 1 Criminal number 23954. United States against George W. Beavers. Bench warrant. Issued November 3rd, 1905. Marshal's return —— —— U. S. marshal.

21 EXHIBIT IV.

The Supreme Court of the District of Columbia, Holding a Criminal Court, in the April Term of the Year of Our Lord One Thousand Nine Hundred and Three.

THE DISTRICT OF COLUMBIA, *S. C. T.*:

The grand jurors for the United States of America inquiring for the District of Columbia upon their oath present, that on the sixth day of October, in the year of our Lord one thousand nine hundred, and from thence until the first day of June, in the year of our Lord one thousand nine hundred and one, George W. Beavers, late of the city of Washington, in the said District of Columbia, at Washington aforesaid, in the said District, was an officer of the said United States and a person acting for and on behalf of the said United States in an official

capacity under and by virtue of authority of the department of the Government thereof, that is to say, superintendent of salaries and allowances, in the office of the First Assistant Post Master General of the said United States, of the Post Office Department of the Government thereof, and during the period aforesaid did act as and perform the duties of said superintendent of salaries and allowances; that on the said first day of July, in the year of our Lord one thousand nine hundred and one, and from thence until and on the 24th day of March, in the year of our Lord one thousand nine hundred and three, the said George W. Beavers was an officer of the said United States and a person acting for and on
22 behalf of the said United States in an official capacity under and by virtue of the authority of a department of the Government thereof, that is to say, general superintendent of salaries and allowances, in the office of the said First Assistant Post Master General of the said United States, in the Post Office Department of the Government thereof, and during the last mentioned period did act as and perform the duties of, said general superintendent; that by reason of his being such officer and person acting as aforesaid, under the law and regulations thereof, then pursuant to law prescribed and promulgated by the Post-master General of the said United States for the government of his department and the conduct of its officers and clerks and in force during the said period, he the said George W. Beavers was charged, amongst other things, with the consideration of orders and allowances for miscellaneous and incidental items and supplies, including furniture, and book-typewriting machines, called book-typewriters, for use in post offices throughout the said United States involving outlays and increase and expenditure of the monies of the said United States appropriated by law for the service of the said Post Office Department for the fiscal years ending June thirtieth, one thousand nine hundred and one, June thirtieth one thousand nine hundred and two and June thirtieth one thousand nine hundred and three, and also with procuring, in accordance with the methods provided by the said regulations and by-law, from persons and corporations proposing to furnish the same, such supplies, furniture and book-typewriters for the use aforesaid, by
23 open purchase or contract at the places and in the manner in which said supplies, furniture and book-typewriters were and are usually bought and sold between individuals, in case the public exigency did not require such purchases and contracts to be made by advertisement for proposals respecting the same,—in the prescribing and promulgation of which said regulations he, the said George W. Beavers, during the periods aforesaid, then had notice; and that during the said periods, and by reason of his being and acting as such superintendent and general superintendent, it became and was the duty of the said George W. Beavers, when discharging the duties with which he was so charged as aforesaid, carefully to guard the interests of the said United States, to observe the laws

thereof, and the regulations aforesaid, and to preserve those interests in considering and making allowances for and procuring such miscellaneous and incidental items and supplies and furniture as aforesaid, and by all reasonable means and in the manner provided by law and the regulations aforesaid to secure terms as favorable to the said United States as possible when making contracts with and securing from persons and corporations proposing to furnish such supplies, furniture and book-typewriters for the said Post-Office Department and for the use aforesaid, involving expenditures when the monies appropriated as aforesaid and by all reasonable and lawful means to obtain by purchase or contract such supplies and furniture for that department, out of the same monies, as cheaply as possible; and that because, as the grand jurors aforesaid, upon their oath aforesaid, charging the fact to be, special trust and confidence were reposed in him by his superior officers the
24 said Post Office Master General and First Assistant Post Office Master General, and by the persons for the time being acting as such superior officers, by reason of his being such officer and person as aforesaid, it then and there also became and was the duty of the said George W. Beavers, under the law and the said regulations, faithfully and truthfully to advise his said superior officer or the person acting as such, of and concerning all the matters requiring their supervision and notice and pertaining to the discharging of his the said George W. Beavers' said duties, and to inform them truly and in good faith concerning all allowances, contracts, undertakings, orders and purchases considered by him in the discharge of his said duties, and concerning all bills or acts rendered against the said United States and the said Post-Office Department in connection with such allowances, contracts, undertakings, orders and purchases and especially in connection with allowances, contracts, undertakings, orders and bills or acts made, entered into and rendered in connection with the purchase of certain furniture and book-typewriters hereinafter mentioned.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that one W. Scott Towers, late of Washington aforesaid, during the periods aforesaid, was an agent of the
25 Elliott & Hatch Book-typewriter Company, a corporation theretofore organized under the laws of the State of New York and then existing under that name, and engaged in the business of manufacturing and selling certain book-typewriting machines, called book-typewriters, and at divers times during the said first mentioned period, under the circumstances hereinafter set forth, did, as such agent of the said corporation, sell and furnish a large number, to wit, fourteen, of such book-typewriters to the said Post Office Department, at the price of two hundred dollars each, that is to say, one book-typewriter each for the post office of the said United States at Columbia, South Carolina; East Liverpool, Ohio; Charleston, South Carolina; Helena, Montana; Rochester, New York; Kingston, New York; and seven book-typewriters for the post office

of the said United States at Boston, Massachusetts; which said book-typewriters were so sold and furnished to the said Post Office Department on divers days during the said first mentioned period.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said first mentioned period, to wit, on the said sixth day of October in the year of our Lord nineteen hundred the said George W. Beavers and W. Scott Towers did enter into an unlawful and corrupt agreement whereby the said W. Scott Towers, agent of the said corporation as aforesaid, undertook and promised on behalf of the said corporation to pay to him the said George W. Beavers, for the own personal use and benefit of him the said George W. Beavers, from time to time as the said corporation itself received payment
26 therefor, and while he continued to be such officer and person acting in an official capacity under and by virtue of the authority of the said Post Office Department as aforesaid, the sum of twenty-five dollars out of each sum of two hundred dollars paid to the said corporation, out of the monies appropriated as aforesaid, for purchasing the said book-typewriters for the said Post Office Department; and that the said George W. Beavers afterwards, to wit, on the eleventh day of July in the year of our Lord nineteen hundred and one, during the last mentioned period, while he the said George W. Beavers was still an officer of the said United States as aforesaid, and a person acting for and on behalf of the said United States in an official capacity as aforesaid, and in pursuance of the said unlawful and corrupt agreement, at Washington, aforesaid, in the said District of Columbia, unlawfully did receive from the said W. Scott Towers, agent of the said corporation, as aforesaid, a certain obligation for the payment of money, to wit, a draft dated that day numbered 139946, drawn by the Citizen's National Bank of Washington City, in the said District of Columbia, upon the Fourth National Bank of New York City, New York, for the payment of the sum of three hundred and fifty dollars to the order of the said W. Scott Towers, and by the said W. Scott Towers endorsed in blank, and this with intent on the part of him the said George W. Beavers, to have his decision and action on a matter then pending and thereafter to be brought before him in his official capacity and in his place of trust influenced thereby to the detriment of the said United
27 States, that is to say, to have his decision and action in the matter of then and thereafter making allowance for and procuring for the said Post Office Department, in the manner aforesaid, from the said corporation, book-typewriters of the kind aforesaid, otherwise than in the manner in which such articles are usually bought and sold between individuals, and not as cheaply as possible, at a price greater in excess of the price at which the same articles could and would have been procured for the said Post Office Department if he the said George W. Beavers had honestly discharged his said duties and not entered into and executed the said unlawful and corrupt agreement with the said W. Scott Towers as aforesaid, that

is to say, twenty-five dollars in excess upon each of the said book-typewriters,—and with intent on the part of him the said George W. Beavers to have his action in the matter of faithfully and truthfully advising his said superior officers, or the persons acting as such, of and concerning the discharge of his said duties, influenced thereby adversely to his true duty and to the interest of the said United States, in such a manner as to cause him to connive at and allow the fraud on the said United States involved in the said unlawful and corrupt agreement; against the peace and dignity of the said United States and contrary to the form of the statute of the said United States in such case made and provided.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers, on the 11th day of July, in the — of our Lord nineteen hundred and one, at Washington aforesaid, in the District of Columbia so being general
28 superintendent of *of* salaries and allowances and a person acting for and on behalf of the said United States in an official capacity under and by virtue of the authority of the Post Office Department of the Government thereof, as in the first count of this indictment set forth, and same having entered into the unlawful and corrupt agreement in this count mentioned, further in pursuance of the said unlawful and corrupt agreement, with the said several intents on his part set forth in the first count, and under the circumstances and condition- therein mentioned unlawfully did receive from the said W. Scott Towers, agent of the corporation in the said first count mentioned, a certain contract, promise and gratuity, for the payment of money, that is to say, a draft for three hundred and fifty dollars, of the value of three hundred and fifty dollars, in the said first count of this indictment described, against the peace and dignity of the said United States, and contrary to the form of the statute in the same case made and provided.

3. And the said grand jurors aforesaid, upon their oath aforesaid, do further present, that the said George W. Beavers on the said eleventh day of July, in the year of our Lord, nineteen hundred and one, at Washington aforesaid, in the said District of Columbia, so being general superintendent of salaries and allowances and a person acting for and on behalf of the said United States, in an official capacity under and by virtue of the authority of the Post Office Department of the Government thereof as in the first count of this indictment set forth, and so having entered into the unlawful
29 and corrupt agreement in that count mentioned, further in pursuance of the said unlawful and corrupt agreement with the said several intents on his part set forth in the said first count, and under the circumstances and conditions therein mentioned, unlawfully did accept and receive from the said W. Scott Towers, agent of the corporation in the said first count mentioned, certain money, that is to say, the draft for three hundred and fifty dollars, of the value of three hundred and fifty dollars, in the said first count of this indictment described; against the peace and dignity

of the said United States, and contrary to the form of the same in such case made and provided.

(Signed) MORGAN H. BEACH,
United States Attorney.

30 Indorsements on indictment: Filed in open court, October 5th, 1903 J. R. Young, clerk. No. 22954 United States *vs.* George W. Beavers Violation of section 5501 R. S. U. S. Witnesses: H. J. Gensler, A. T. Brice, George D. Ashton, E. L. McKee, M. D. Helm, E. H. Schley, Charles Flynn Howard M. Jacobs, Mrs. H. J. Gensler, Jr. A true bill. A. M. McLachen, foreman.

31 EXHIBIT V.

United States Circuit Court for the Southern District of New York.

UNITED STATES
against
GEORGE W. BEAVERS.

UNITED STATES OF AMERICA,
Southern District of New York, City of New York, } ss:

Be it remembered that on this 24th day of May, 1904, before me, George B. Adams, judge of the district court of the United States, in and for the southern district of New York, personally came George W. Beavers, as principal and James R. Brown as surety and jointly and severally acknowledged themselves to owe the United States of America the sum of ten thousand ($10,000) dollars, to be levied on their goods and chattels, lands and tenements if default be made in the condition following, to wit: Whereas on the 24th day of May, 1904, the said George W. Beavers did surrender himself into the custody of William Henkel, United States marshal for the southern district of New York for the purpose of removal to the eastern district of New York, under the warrant of removal issued on November 10th, 1903, by Hon. George C. Holt, judge of the district court for the southern district of New York.

Now therefore, the condition of this recognizance is such that if the said George W. Beavers shall personally appear before
32 the circuit court of the United States, for the eastern district of New York, held in the city of Brooklyn in the district aforesaid, on the first day of the next regular term for the trial of bail cases then and there to answer unto an indictment pending therein for violation of section 1781 of the Revised Statutes of the United States, presented to said court against him on the 23rd day of July, 1903, by the grand jury of the United States within and for the eastern district of New York, and then and there render himself into the jurisdiction of the said court and obey and abide the orders

of said court and not depart therefrom without the leave of said court, then this recognizance to be void; otherwise to remain in full force and virtue.

GEORGE W. BEAVERS. [SEAL.]
JAMES R. BROWN.

Taken and acknowledged before me the day and year first above written.

GEO. B. ADAMS, *U. S. D. J.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James R. Brown of 510 West 157th street in the city of New York being duly sworn, says that he is worth the sum of twenty thousand dollars over and above all his just debts and liabilities.

JAMES R. BROWN.

Sworn to and subscribed before me this 24th day of May, 1904.

GEORGE B. ADAMS, *U. S. D. J.*

Recognized approved as to form and sufficiency.

HENRY L. BURNETT,
U. S. Attorney.

33 EXHIBIT V.

UNITED STATES
vs.
GEORGE W. BEAVERS.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James R. Brown, being duly sworn, says that he resides at 510 West 157th street, in the city of New York, borough of Manhattan; that he desires to be accepted as surety upon the annexed recognizance for the appearance of George W. Beavers for trial in the United States circuit court for the eastern district of New York, and that for the purpose of inducing the United States to accept him as such surety, he makes the following statement, to wit:

That he is the owner in fee simple of all that certain lot, piece or parcel of land, with the buildings thereon, situate and being in the county of New York, and known as Nos. 49 and 51 East 131st street, county of New York, borough of Manhattan; that the value of said property is at least the sum of sixty thousand dollars ($60,000.); that the same are subject to mortgages in the aggregate amount of forty-two thousand dollars ($42,000.00); that there are no other liens of any sort whatsoever thereon. That he is also the owner

in fee simple of all that certain lot, piece or parcel of land, with the buildings thereon, situate, lying and being in the county of New York and known as No. 446 West One hundred and twenty-fourth street, New York city, borough of Manhattan, and that the
34 value thereof is at least the sum of thirty thousand dollars ($30,000.00), and that the same is subject to a mortgage of twenty-one thousand dollars ($21,000) that there are no other mortgages or liens of any nature whatsoever thereon. That there are no judgments against him in this city or elsewhere; that he is not surety upon any other recognizance, and that he is worth at least the sum of twenty thousand dollars over and above all his debts, liabilities and obligations.

JAMES R. BROWN.

Sworn to before me this 24th day of May, 1904.

GEO. B. ADAMS, *U. S. D. J.*

35 EXHIBIT VI.

MAY 27, 1904.

Messrs. Morgan & Seabury, 290 Broadway, New York.

GENTLEMEN: You will please take notice that in the case of the *United States vs. George W. Beavers* you are hereby required to produce the defendant before the circuit court of the United States in and for the eastern district of New York at the court-room of said court in the Federal building, borough of Brooklyn, city of New York, N. Y., on Wednesday, the first of June, 1904, at ten o'clock in the forenoon of that day, for the purpose of pleading to the indictments heretofore found by the grand jury of this district against the said defendant.

Respectfully yours,

(Signed) WM. J. YOUNGS,
U. S. Attorney.

36 EXHIBIT VII.

The President of the United States of America to the marshal of the United States for the southern district of New York and to his deputies of any or either of them:

Whereas, one George W. Beavers has been arrested and imprisoned in this district by Samuel M. Hitchcock, an United States commissioner for the southern district of New York for an offence alleged to have been committed in another district, that is to say, for having on the 25th day of July in the year one thousand nine hundred at the eastern district of New York in the borough of Brooklyn, being at the time an officer of the Government of the United States, that is to say, superintendent of salaries and allowances in the office of

the First Assistant Postmaster General of the United States in the city of Washington, District of Columbia, and as such officer being duly charged amongst other things with the consideration of allowances for expenditures and with the procuring of contracts for supplies and with making purchases of supplies in pursuance of rules and regulation—of which the said Beavers had notice and in pursuance of the fraudulent agreement theretofore made by the said Beavers with the Edward J. Brandt-Dent Company, whereby the said Beavers was to recommend and procure contracts for the purchase from said company by the said Postmaster General, for the use of the department of 250 automatic cashiers upon conditions that said Beavers out of the
37 monies received by said company from such purchase should receive a certain portion and in pursuance of said fraudulent agreement and because of his having contrary to his said duties and trust fraudulently procured and aided in procuring for the said company the business and contract aforesaid, and the said company had furnished said cashiers to the said Post Office Department and had been paid for the same the said Beavers did on said day and place while still being such officer receive from said company the sum of $810.00 as the consideration of his having procured the business and contract aforesaid for the said Edward J. Brandt-Dent Company as by reference to the original warrant of arrest and the commitment endorsed thereupon which are hereto attached, will more fully and at large appear, and

Whereas, the said eastern district of New York is that in which trial of said offence is to be had and the United States attorney of this district having applied to me for a warrant of removal under the provisions of section 1014 of the Revised Statutes of the United States.

Now therefore, you are hereby commanded in the name of the President of the United States of America, to remove the said George W. Beavers forthwith to the eastern district of New York, and to safely deliver him to the marshal of said district or to such person as shall be by the said marshal deputized to receive him.

Given under my hand this 10th day of November, in the year one thousand nine hundred and three.

GEORGE C. HOLT,

38 *United States District Judge, Southern District of New York.*

Attest:

—— ——, *Clerk.*

The marshal is directed not to execute this warrant until 5 p. m. this day November 10, 1903.

GEORGE C. HOLT, *J.*

39 (Endorsements on back.)

United States circuit court. The United States of America *vs.* George W. Beavers. Warrant of removal. Henry L. Burnett, U. S. attorney.

I do hereby acknowledge the receipt from William Henkel, United States marshal for the southern district of New York, of the body of the within-named George W. Beavers, together with a copy of the within warrant.

Dated, Brooklyn, N. Y. ——, 1903.

——— ———,
U. S. Marshal.

I do hereby certify that there was this day filed in my office the original warrant of removal, of which the within is a copy.

Dated, Brooklyn, N. Y. ——, 1903.

——— ———,
Clerk for *the United States Circuit Court for the Eastern District of New York.*

40 EXHIBIT VIII.

UNITED STATES OF AMERICA, }
Eastern District of New York. }

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the warrant annexed to this certificate is a true copy of the original on file and remaining of record in my office and of the return of the United States marshal thereon.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the borough of Brooklyn, city of New York, in the eastern district of New York, this 3rd day of September, in the year of our Lord one thousand nine hundred and three.

B. LINCOLN BENEDICT, *Clerk.*

[Seal as in certificate on indictment.]

To the marshal of the United States of America for the eastern district of New York and to his deputies or any or either of them:

Whereas, at a circuit court of the United States of America for the eastern district of New York, began and held at the borough of Brooklyn, city of New York within and for the district aforesaid, on the 22nd day of July, in the year of our Lord one thousand nine hundred and three, the grand jurors in and for the said dis-

trict brought into the said court a true bill of indictment
41 against George W. Beavers for having on the 25th day of July, 1900, he the said George W. Beavers being then and there an officer in the employ of the Government of the United States, received compensation, that is to say, a check for the sum of eight hundred and ten dollars, wilfully, knowingly and unlawfully; from the Edward J. Brant-Dent Company in payment for services for procuring a contract from the United States Government for the purchase of 250 Brandt automatic cashiers by the said United States Government, the said check being drawn by one Edmund H. Driggs upon the First National Bank of Brooklyn to the order of the said George W. Beavers, as by the said indictment now remaining on file and of record in the said court, may more fully appear; to which indictment the said George W. Beavers has not yet appeared or pleaded.

Now therefore you are hereby commanded, in the name of the President of the United States of America to apprehend the said George W. Beavers and him bring before the said court at the United States court room in the borough of Brooklyn, city of New York, the 14th day of August, in the year of our Lord one thousand nine hundred and three.

B. LINCOLN BENEDICT, *Clerk.*

WILLIAM J. YOUNGS,
U. S. Attorney.

(Endorsements on bench warrant.)

On first division of back: The within defendant not found.
42 Charles J. Haubert, U. S. marshal. September 3, 1903.

On second division of back: Exhibit B. United States circuit court. The United States of America *vs.* George W. Beavers. Indictment. Bench warrant. William J. Youngs, U. S. attorney.

Endorsed: Petition. Filed June 17, 1904.

43 The President of the United States to the U. S. marshal for the eastern district of New York, Greeting:

We command you that you have the body of George W. Beavers by you imprisoned and detained as it is said, together with the time and cause of such imprisonment and detention by whatever name the said George W. Beavers shall be called or charged before a stated term of the circuit court of the United States for the eastern district of New York, to be held in the Post Office building in the city of New York, borough of Brooklyn, on the 17th day of June, 1904, at 2 o'clock in the afternoon to do and receive what then and there shall be considered concerning said George W. Beavers, and have then and there this writ.

Witness: Honorable Edward B. Thomas judge of the district

court of the United States for the eastern district of New York, the 17th day of June, 1904.

Test:

[SEAL.] B. LINCOLN BENEDICT, *Clerk.*

MORGAN & SEABURY,
Att'ys for Petitioner.

Office and P. O. address 290 Broadway, borough of Manhattan, New York city.

Writ allowed
EDWARD B. THOMAS, *U. S. J.*

Endorsed: Writ of *habeas corpus* Filed June 17, 1904.

44 United States Circuit Court, Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

UNITED STATES OF AMERICA,
Eastern District of New York, } ss:

Charles J. Haubert, being duly sworn, deposes and says that he is United States marshal for the eastern district of New York; that he has read the verified petition of George W. Beavers for the writ of *habeas corpus*, petitioned for herein.

Deponent further says that the said George W. Beavers is in his custody, under and by virtue of a warrant duly issued upon a verified complaint, by B. Lincoln Benedict, United States commissioner for the eastern district of New York, which warrant bears date the third day of June, in the year one thousand nine hundred and four, the memorandum endorsed on said warrant being "June 17, 1904, defendant appears in pursuance of parole. No bail being tendered, defendant is committed to custody of marshal for examination. B. Lincoln Benedict, commissioner." That by virtue of the said commitment hereinbefore recited, your deponent took the said George W. Beavers into his custody upon the said 17th day of

45 June, 1904, and since that time has detained him in such custody. Deponent refers to the original warrant and endorsement now in his possession which he hereby makes a part of this return and a copy of which is hereto annexed and marked Exhibit A.

Deponent denies that the said George W. Beavers is restrained of his liberty without due process of law, that the arrest under the process hereinbefore set forth is void or without force and effect, that the restraint and detention of the said George W. Beavers under said process is illegal or in violation of the rights of the said George W. Beavers under the Constitution of the United States.

Deponent further denies that he had no authority to arrest the said George W. Beavers, the petitioner herein, under the said warrant, or that the said United States commissioner had no jurisdiction to issue the said warrant or to require bail from the said George W. Beavers and to hold him in default thereof.

Deponent further denies that the said George W. Beavers has a right to remain in the eastern district of New York at his pleasure or until he is tried upon any indictment or until said indictment is quashed or otherwise disposed of, and also denies that the arrest made by your deponent in obedience of the warrant hereinbefore set forth and the restraint of the said George W. Beavers under the said warrant and the commitment of the said commissioner endorsed thereon, is in violation of the constitutional right of the said George W. Beavers not to be restrained without due process of law; and

46 your deponent further denies that the said commissioner is without jurisdiction or authority to arrest, bail or commit the said petitioner, George W. Beavers, while he is within the jurisdiction of the United States authorities in the eastern district of New York, pending his pleading to any indictment in said eastern district of New York.

Deponent alleges that he has no information sufficient to form a belief as to the other allegations contained in said petition, and therefore denies the same.

CHARLES J. HAUBERT.

Sworn to before me this 17th day of June, 1904.

B. LINCOLN BENEDICT,
U. S. Commissioner.

UNITED STATES OF AMERICA, *Eastern District of New York*, } ss:

Charles J. Haubert, being duly sworn, deposes and says that he is United States marshal for the eastern district of New York and the person who made the foregoing deposition; that he has read the same and knows the contents thereof, and the same are true, except as to those matters therein alleged to be stated on information and belief, and as to those matters he believes it to be true.

CHARLES J. HAUBERT.

Sworn to before me this 17th day of June, 1904.

B. LINCOLN BENEDICT,
U. S. Commissioner.

47 EXHIBIT A.

Copy.

The President of the United States of America to the marshal of the United States for the eastern district of New York, and to his deputies, or any or either of them:

Whereas, complaint on oath has been made to me, charging that George W. Beavers at Washington in the District of Columbia on the 11th day of July in the year one thousand nine hundred and one, being then and there an officer and agent of the Government in the employ of and under the Post Office Department of the United States, did knowingly and unlawfully receive and accept an obligation for the payment of money from one W. Scott Towers who was then and there an agent of the Elliott and Hatch Book Type Writer Company, that is to say, a draft on the Fourth National Bank of New York City for the sum of $350.00 payable to the order of said Towers and by said Towers endorsed for payment, with intent that the action or decision of said Beavers in a matter then pending or to be brought before him for consideration in his official capacity should be influenced thereby, as by a copy of said complaint hereto annexed may more fully and at large appear, and contrary to the statutes of the United States in such behalf made and provided.

Now therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said George W. Beavers wherever he may be found, and bring his
48 body forthwith before me, or some judge or justice of the United States, or other United States commissioner, that he may then and there be dealt with, for said offence according to law.

Given under my hand and seal, this 3d day of June in the year of our Lord one thousand nine hundred and four.

[SEAL.] B. LINCOLN BENEDICT,
United States Commissioner for the Eastern District of New York.

49 Endorsements.

U. S. commissioner's office eastern district of New York. The United States of America vs. George W. Beavers. Warrant to apprehend. Bail in $10,000. Filed June 8, 1904.

The within named George W. Beavers arrested and before the commissioner, Dated June 8, 1904 Chas. J. Haubert U. S. marshal June 8, 1904.—Hearing on bail had. Hearing on charges adjourned to Monday June 13th, 1904, at 9:45 a. m. B. Lincoln Benedict U. S. commissioner.

June 13, 1904.—Hearing had, testimony taken. Def't remanded to custody of marshal. Hearing adjourned to Monday June 20, 19 04, 10:30 a. m. Def't paroled in custody of counsel till Friday June 17th 10 a. m. B. Lincoln Benedict U. S. com.

June 17, 1904.—Def't appears in pursuance of parole, no bail being desired, def't is committed to custody of the marshal for examination. B. Lincoln Benedict, U. S. com.

Endorsed: Return to writ of *haveas corpus* Filed June 17, 19 04.

50 United States Circuit Court, Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

Before Hon. Edward B. Thomas, judge of the United States district court for the eastern district of New York.

The said petitioner, George W. Beavers, in answer to the return of the said Charles J. Haubert, marshal for the United States for the eastern district of New York, to the writ of *habeas copus* heretofore directed to him and duly issued by the Hon. Edward B. Thomas, on the 17th day of June, 1904.

First. Denies each and every allegation therein contained except as hereinafter specifically admitted.

Second. Further answering the said return the said petitioner alleges and re-avers each and every allegation in his petition contained, and makes them part hereof.

Third. The petitioner admits that he is in the custody of the marshal of the United States for the eastern district of New York by virtue of a warrant and commitment endorsed thereon as alleged in said return, and admits the correctness of the copy attached to the said return and marked Exhibit "A."

51 Wherefore petitioner prays that the writ be sustained and the petitioner discharged from custody.

GEORGE W. BEAVERS, *Petitioner.*

MORGAN & SEABURY,
Attorneys for Petitioner, 290 Broadway, New York City.

52 UNITED STATES OF AMERICA, }
Eastern District of New York, County of Kings, } *ss:*

George W. Beavers being duly sworn deposes and says, that he has read the foregoing traverse to the return of the said Charles J. Haubert, marshal as aforesaid, and knows the contents thereof; that the same is true in all respects to the knowledge of the deponent ex-

cept as to matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

GEORGE W. BEAVERS.

Subscribed and sworn to before me this 17th day of June, 1904.

RICHARD P. MORLE,
U. S. Commissioner, E. Dist. of N. Y.

Endorsed: Traverse to return Filed June 17th, 1904

53 JUNE 17, 1904.

Stated Term.

Present: Hon. Edward B. Thomas, district judge holding the court.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

Defendant present.
Application for discharge of defendant.
Mr. Seabury argues for application.
Mr. Youngs argues against application.
Decision reserved. Briefs to be handed up.
Defendant directed to remain in custody of U. S. marshal but with permission to U. S. marshal to parole him in custody of his counsel till June 18, 1904.

54 United States Circuit Court, Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*. June 29, 1904.

Morgan & Seabury, attorneys for petitioner, William M. Seabury, of counsel.
Charles H. Robb, assistant attorney general. William J. Youngs, United States attorney.

THOMAS, *J.*:

In re Beavers, 125 F. R. 988, it appears from the opinion of Judge Holt, as follows:

"The petitioner was indicted by the Federal grand jury in the eastern district of New York. A warrant for his arrest was issued by the judge of "that district" * * *, but he was not found within that district. An application was thereupon made to Samuel M. Hitchcock, a United States commissioner in the southern district, for a warrant for his arrest and removal. A warrant was issued by

the commissioner, under which the petitioner was arrested and brought before him. The petitioner demanded an examination, and gave bail for his appearance before the commissioner. Subsequent to the finding of the indictment in the eastern district of New York, another indictment against the petitioner was found by the grand jury of the District of Columbia. A bench warrant was issued by the supreme court of the District of Columbia for his arrest under the indictment, but not being found within the District of Columbia, another application was made to Commissioner Hitchcock, in the southern district of New York, for his arrest and removal under the second indictment. A warrant on this second application was issued by the commissioner, under which he was arrested by the
55 marshal of the southern district of New York, and brought before the commissioner. The petitioner thereupon demanded an examination, and was again admitted to bail by the commissioner. The bail given upon the second arrest under the warrant issued upon the indictment in the District of Columbia subsequently surrendered the petitioner to the marshal for the southern district of New York, and thereupon the petitioner filed a petition in this court for this writ of *habeas corpus*, alleging that his second arrest was illegal."

The learned judge determined that the arrest on the second warrant should be vacated. Thereafter such proceedings were had that the defendant, at all times resisting, was ordered to be removed to the eastern district of New York, and gave bail for his appearance in the circuit court held in that district. He duly appeared, and being arraigned for pleading to three indictments found against him, by the grand jury for the eastern district of New York, moved to quash the indictments, and for a bill of particulars. But before such motions were heard, the defendant, after this court was duly advised of the purpose so to do, was arrested upon a warrant issued by a United States commissioner for the eastern district of New York, for the purpose of removing him to the District of Columbia. He was not physically detained upon such warrant pending the inquiry before the commissioner. The circuit court for the eastern district of New York deferred the hearing of the motions pending the hearing before the commissioner, for the purpose of allowing the warrant to be served upon the defendant, and to permit the proceedings to continue before the commissioner. Thereafter the petitioner applied for a writ of *habeas corpus*, which was granted by this court, the petitioner having
56 been surrendered to the marshal, who thereupon brought him to the court pursuant to the writ. The parties have been heard. The learned counsel for the petitioner has by oral argument and brief clearly set forth the petitioner's position, which is, that the commissioner had no power to issue the warrant, pending the disposition of the indictment in the eastern district, for the purpose of removing the petitioner to the District of Columbia; and that even if such power existed, the court should not allow such

proceedings for removal, until justice in its own jurisdiction shall have been administered. The contention that the commissioner has no power to entertain the proceeding is sought to be supported upon the well known principle, that the justice of one sovereignty must be satisfied before it will yield to the demands of another government, for the purpose of administering its justice. Perhaps the true statement is this: It is within the power of a government, acting through the proper department thereof, to refuse to surrender either property or persons to another government, while the administration of justice within its own borders demands their presence. Taylor *v.* Taintor, 16 Wall. 366. A State has full power to demand, that a person arrested upon a civil or criminal process within its border, shall remain amenable to its courts until there has been due administration of justice therein. But it will be observed that the exercise of this power is at the will of the State itself, expressed through its proper officers or tribunals, and that the person apprehended may not constrain such government, so having jurisdiction, to exercise its will, although for
57 the purpose of preserving his bail from forfeiture, or to save other default, he, or his sureties, should resist any attempt of any government to remove him from the control of the jurisdiction to which he is primarily bounden. But if he has not done nor suffered anything bringing him in default, of if the government first acquiring jurisdiction consents to his removal, and the defendant by removal is prevented from meeting his obligation to such government, he is no longer bound to respond. The rule of continuing obligation to the State having the person or thing in its actual or constructive control, is not for the benefit of the defendant, but for the protection of public justice within that State. It is a right that it alone may assert, although it is clearly the duty of the defendant to ask it to assert such right, that his bond may be relieved in case of refusal or waiver. In Taylor *v.* Taintor, *supra*, Mr. Justice Swayne states:

"It is the settled law of this class of cases that the bail will be exonorated where the performance of the condition is rendered impossible by the act of God, the act of the obligee, or the act of the law. Where the principal dies before the day of performance, the case is within the first category. Where the court before which the principal is bound to appear is abolished without qualification, the case is within the second. If the principal is arrested in the State where the obligation is given and sent out of the State by the governor, upon the requisition of the governor of another State, it is within the third. In such cases the governor acts in his official character, and represents the sovereignty of the State in giving efficacy to the Constitution of the United States and the law of Congress. If he refuse, there is no means of compulsion. But if he act, and the fugitive is surrendered, the State whence he is removed can no longer require his appearance before her tribunals, and all obli-

gations which she has taken to secure that result thereupon at once, *ipso facto*, lose their binding effect."

58 Observe the words, "In such cases the governor acts in his official character, and represents the sovereignty of the State," etc.

It is quite clear that it is for the governor of the State, upon requisition, to determine whether the public justice of his State shall be administered, before permitting the defendant to be subjected to the laws and tribunals of another State. He acts for the State, and his act binds the State in its several departments. But even if it be within the power of a court having jurisdiction of a defendant to thwart the command of the executive, as the defendant claims was done in Hobbs *v.* The State, (22 S. W. R. 1035) by the court of criminal appeals of Texas, yet the court itself has the power to subject its own administration to that of a foreign State. But wherever the power of removal may reside, the question involved is whether one government shall yield precedence to another, in the matter of the custody of the same defendant, for the purpose of trial. In the case at bar no such question exists. The United States is the common sovereign whose judicial power is vested in courts created by the Constitution or laws made pursuant thereto, and for convenience judicial departments and districts, subdividing the whole territory, have been established. The accuser in each artificial division of territory, wherein there is a localized court, is the same; its general penal statutes are usually common to the whole public domain; its justice alone is to be administered. "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may,

59 from time to time, ordain and establish." But the sovereignty offended in criminal cases is always the United States, and the courts to whom the Constitution and Congress have confided the inquiry belong to one of the principal departments in which the governmental power resides. But the court acts only when the sovereign accuses, and the only constitutional limitation upon the General Government, as to locality of action, is that the accused shall be tried "by an impartial jury of the State and district wherein the crime shall have been committed." (Article VI, amendments.) Hence, the National Government is one sovereign, common to all judicial districts. Whether the laws have been violated in the eastern district of New York, or the District of Columbia, the same political body has been offended; it alone seeks vindication. Hence it is quite obvious that no question can arise similar to that where one government seeks to take a person from another jurisdiction, and each demands vindication of its own justice. But, as a State may consent to make its own demand secondary to that of another State, so the United States may yield, or may decline to yield, its rights first to vindicate its law and surrender the accused to another power. Much the more may it select in what order it will prosecute offences against itself. As in the case of a person

seized by the State for violation of its law, the State and not the person may determine whether the criminal justice of that State shall be first administered, before the surrender of the offender to another government for trial; so the Federal Government may determine the order of priority of trials for offences against it, or whether there shall be any trial
60 at all. The relative power of the executive or court to decide the order of arraignment does not seem difficult. If the executive department, acting through the Department of Justice, seeks the aid of the court to effect a removal to another district, it would be quite within the power of the court to retain the control of the defendant, for the purpose of trial within its district. But Congress has vested the initial power of prosecution in the district attorney, (sec. 771, U. S. R. S.) and has subjected him to the "general superintendence and direction" of the Attorney General, (sec. 362, U. S. R. S.) who in his turn is the head of the "executive department to be known as the Department of Justice." (Sec. 202, U. S. R. S.) And when, as in the present instance, the Attorney General asks that the defendant be removed to another district to meet an indictment against him there found, and the district attorney of this district coöperates for such removal, the court may, at least in the exercise of a sound judgment, permit such removal upon a proper case being made therefor. This does not mean that a defendant may be removed to another district, under conditions which would disturb the due administration of justice in the court where the defendant is held at the time, nor where the removal would work an injustice to the defendant in respect to the indictment pending in such court. In the case at bar it does not appear that the defendant will be injured by the removal, as to the indictment in this court. It is true that the Constitution gives him a right to a speedy trial, but it gives him a right to a speedy trial in
61 the District of Columbia, as well as in the eastern district of New York. The Constitution does not assure him the speedier trial in this district, nor enable him to select the court in which he shall first be tried. The vigor of his late struggle to prevent removal to this district does not harmonize with a desire for a speedy trial here. His absence defeated a possible trial at the May term, and another opportunity will not occur before October. The administration of justice elsewhere should not be delayed by his tardy appearance in this court.

Judge Holt held that the two proceedings in the southern district for removal to two several and distinct districts could not occur. The learned judge did not decide that after his removal to this district should have been perfected, he could not be removed to the District of Columbia, but pointed out that it was illogical to ask the commissioner to hold him for removal in two different directions at the same time. It may be that the learned judge would have been justified in deciding that the commissioner was simply asked to hold the defendant for removal, but that he had no power

to order removal, and that the question of the district to which he should be sent should await application to the court for his actual removal. But Judge Holt's solution of the question before him was direct, convenient, and practical. Why should the same commissioner be engaged in determining the question of holding for removal to different districts, when the defendant could be removed to but one, and why should the Government and the defendant be at
the expense and difficulty of determining the matter of a
62 double removal, when but a single removal was possible. Moreover, as this court had first asked for his removal to this district, it was quite within the power of the district court for the southern district of New York to award priority to such demand. It will, however, be noticed that the Government was not asking that court to award priority to the court in the District of Columbia, but to allow the commissioner to conduct two separate proceedings, looking to the removal of the defendant in two opposite directions. The Government, at the instance of district attorneys of two distinct districts, was pursuing two antagonistic inquiries at the same time, when it was evident that one or the other of the inquiries must prove useless. It is not perceived that the question decided by Judge Holt has any bearing upon the power of this court to release its control of the defendant. It is in its discretion to retain him for trial, or to send him elsewhere for arraignment. The executive department asks that he be sent elsewhere. No valid reason appears for rejecting its advice. It is urged that the Government elected to remove the defendant to this district, and that it should be bound by it. The proceeding for removal to this district was first taken, and that for removal to the District of Columbia followed. Judge Holt held that the second could not proceed with the first pending, therefore he vacated the arrest in the second proceeding. Thereupon the Government had the alternative of dropping the proceeding for removal to this district, and renewing the other, or of pursuing the first,
bringing the defendant to this district, securing his custody
63 and arraignment here, and thereafter removing him to the District of Columbia, for arraignment on the indictment there. In this manner an orderly opportunity of bringing the defendant into the several courts, where he was accustomed, was secured. In any case it is considered that the Government is not precluded now from instituting proceedings for removal to the other district. This court was advised by the district attorney of the proposed removal proceedings and acquiesced in them. In view of the defendant being under bail for his continuing appearance at this court, the commissioner neither required him to give bail nor to be imprisoned. As regards the commissioner, the defendant was free, and delivered himself up to the marshal that he might be brought up on this writ. This may have no legal importance, but illustrates that he was not burdened. It is concluded that the commissioner has power to entertain the proceedings before him, and that this

court is advised of no state of facts that requires it in its discretion to vacate or restrain them.

The writ should be dismissed.

EDWARD B. THOMAS, *U. S. J.*

64 At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second judicial circuit, held at the United States court rooms, in the borough of Brooklyn, on the twenty-ninth day of June in the year of our Lord one thousand nine hundred and four.

Present: The Honorable Edward B. Thomas, district judge holding the court.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

A writ of *habeas corpus* having been issued herein upon the seventeenth day of June, 1904, directed to the marshal of the United States for the eastern district of New York as the person having the custody of the above named George W. Beavers, commanding the said Charles J. Haubert as said marshal to produce the body of the said George W. Beavers before the United States circuit court for the eastern district of New York at a term thereof to be held in the Federal building, borough of Brooklyn, county of Kings, New York, upon the said seventeenth day of June, 1904, and the said George W. Beavers having been produced at that time in said court by the said Charles J. Haubert, and a return to said writ of *habeas corpus* having been made and filed by the said Charles J. Haubert as such United States marshal aforesaid, and a traverse having been filed to said return by the said George W. Beavers, and a hearing having been had thereon upon the said sev-

65 enteenth day of June, 1904, and the proceeding thereon having been adjourned until this day, now, upon reading the said writ of *habeas corpus* and the petition of the said George W. Beavers, verified the 17th day of June, 1904, the return to said writ, verified the 17th day of June, 1904, and the traverse to said return, all of which papers are on file in the office of the clerk of this court, and due deliberation having been had thereon, and it appearing that the said Charles J. Haubert, as said United States marshal, has the custody of the said George W. Beavers, by virtue of a warrant of arrest issued to him by B. Lincoln Benedict, United States commissioner for the eastern district of New York, and the commitment endorsed thereon, upon the 17th day of June 1904, by said commissioner, which warrant bears date the third day of June, 1904, and which warrant directed the arrest and taking into custody of the said George W. Beavers upon a verified complaint recited in said warrant and that the said George W. Beavers was duly arrested and taken into custody by virtue and under the authority of said warrant, and upon his being arraigned before the said B. Lincoln

Benedict, United States commissioner as aforesaid, was duly committed, in default of the amount of bail which had been fixed by said commissioner, to the custody of the said marshal for examination, and it also appearing to my satisfaction that the said George W. Beavers is not restrained of his liberty under said commitment without due process of law but that the said commitment and the proceedings upon which said commitment was made were in all
66 respects properly and legally had, and that the said commissioner had jurisdiction over the subject matter of said complaint and had jurisdiction to issue the said warrant and to require bail of the said George W. Beavers and to hold him in default thereof, and after hearing William M. Seabury, Esquire, of counsel, on behalf of the said petitioner George W. Beavers, in support of said application, and Hon. Charles H. Robb, Ass't Att'y General of the U. S., and William J. Youngs, Esquire, United States attorney for the eastern district of New York, in opposition thereto, it is

Ordered, that the motion on said writ of *habeas corpus*, to discharge the said George W. Beavers, be, and it hereby is in all respects denied, and said writ of *habeas corpus* discharged, and that the said George W. Beavers be, and he hereby is delivered to and left in the custody and control of the said Charles J. Haubert, United States marshal for the eastern district of New York, to be held for examination before the said B. Lincoln Benedict, United States commissioner as aforesaid, under and by virtue of the said commitment of June 17, 1904.

EDWARD B. THOMAS, *U. S. J.*

Endorsed: Order dismissing writ of *habeas corpus* Filed and entered June 29, 1904

67 At a stated term of the circuit court of the United States in and for the eastern district of New York, held at the United States court house and post office building, in the borough of Brooklyn, city of New York, on the 5th day of July 1904.

Present: The Honorable Edward B. Thomas, district judge.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant, *against* CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York.	Order as to Custody and Bail.

An appeal having been duly taken to the Supreme Court of the United States by the above named petitioner and appellant, from an order this day entered herein dismissing a writ of *habeas corpus*,

Now, on motion of Morgan & Seabury, it is

Ordered that pending the said appeal, the custody of the said George W. Beavers in this proceeding shall not be disturbed and that he remain in the custody of Charles J. Haubert, United States marshal in and for the eastern district of New York, and be kept and detained in such custody pending and until the determination of said appeal by the said Supreme Court of the United States and the further order of the court thereon, unless he give the bail hereinafter required.

(Signed) EDWARD B. THOMAS,
U. S. District Judge, Presiding in the Circuit Court.

On application of the appellant, it is

Ordered that Joseph G. Cochran, Esq., United States commissioner for the eastern district of New York, take recognizance in the sum of 5000[00] dollars for the appearance of the appellant, George W. Beavers, on the entry of the final order in the United States circuit court upon the mandate of the Supreme Court of the United States.

Dated the 5th day of July, 1904.

(Signed) EDWARD B. THOMAS,
U. S. District Judge.

Endorsed: Order as to custody of bail. Filed and entered July 5th, 1904.

68 In the Supreme Court of the United States.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York.

UNITED STATES OF AMERICA,
Eastern District of New York, } *ss:*

Be it remembered that on the 5th day of July, 1904, before me Joseph G. Cochran United States commissioner in and for the eastern district of New York, personally came George W. Beavers, as principal, and John McCormack and Henrietta A. Sedgwick as sureties and severally acknowledged themselves to owe to the United States of America, that is to say, the said George W. Beavers the sum of $5000.00 *dollars* and the said John McCormack the sum of $5000.00 *dollars* and the said Henrietta A. Sedgwick the sum of $5000 *dollars*, separately to be made and levied on their respective goods, chattels, lands and tenements to the said United States if default shall be made in the condition following, to wit:

Whereas the said George W. Beavers was detained in the
69 custody of Charles J. Haubert, United States marshal in and for the eastern district of New York, under a warrant of arrest issued by B. Lincoln Benedict, Esq., United States commissioner in and for the eastern district of New York, on the 3d day of June, 1904.

Whereas the said George W. Beavers made an application to the United States circuit court before Honorable Edward B. Thomas, district judge, on the 17th day of June, 1904, for a writ of *habeas corpus* directed to said Charles J. Haubert, Esq., requiring said marshal to bring George W. Beavers before said court together with the cause of his detention, and

Whereas the said Charles J. Haubert, on the 17th day of June, 1904, did make a return to said writ and did produce the said George W. Beavers before the said circuit court of the United States, and

Whereas on the 29th day of June, 1904 the said Honorable Edward B. Thomas, did make his final order dismissing the said writ of *habeas corpus*, and

Whereas the said George W. Beavers has appealed from said final order to the Supreme Court of the United States, and

Whereas the said Honorable Edward B. Thomas, United States district judge did thereupon allow such appeal and ordered that the said George W. Beavers be enlarged upon bail in the sum of $5,000.00 *dollars* for his appearance to answer the exigency and determination of said appeal and to personally abide the final decision and determination of the said Supreme Court of the United States in that behalf.

70 Now, therefore, the condition of this obligation is such that if the said George W. Beavers shall duly personally appear in the United States circuit court for the eastern district of New York, to answer the exigency and determination of said appeal and personally abide the final decision and determination of the said supreme court of the United States and of said circuit court of the United States, upon the mandate of the said supreme court of the United States and obey and abide the orders of said circuit court of the United States and not depart without leave upon the conditions aforesaid and upon the entry of said orders upon said appeal, then this recognizance to be void, otherwise to remain in full force and virtue.

HENRIETTA A. SEDGWICK.
GEORGE W. BEAVERS.
JOHN McCORMACK.

Taken and acknowledged before me the day and year first above written.

J. G. COCHRAN,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, ss:

Henrietta A. Sedgwick and John McCormack, being duly severally sworn, say and each of them say that he John McCormack resides at No. 448 Fifth avenue, borough of Brooklyn, N. Y., and she Henrietta A. Sedgwick resides at No. 1256 56th St., borough of Brooklyn, N. Y.; that each is worth the sum of ten thousand dollars over and above all his and her just debts and liabilities in property not exempt from execution.

JOHN McCORMACK.
HENRIETTA A. SEDGWICK.

Sworn to before me this 5th day of July, 1904.

J. G. COCHRAN,
U. S. Commissioner.

Recognizance approved as to form, amount and sufficiency.

EDWARD B. THOMAS, *U. L. S. J.*

71 Endorsed: Bond pending appeal. Filed July 5th, 1904.

72 Circuit Court of the United States for the Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, Appellee.

The petition of the above named petitioner, George W. Beavers, for an order allowing an appeal to the Supreme Court of the United States from the final order hereinbefore entered in this case.

George W. Beavers the petitioner and appellant above named feeling himself aggrieved by the final order heretofore made and entered by this court in this case on the 29th day of June, 1904, whereby a writ of *habeas corpus* directed to Charles J. Haubert, United States marshal in and for the eastern district of New York, requiring the said marshal to bring and have your petitioner before this court together with the time and cause of his detention forthwith, for such action as might be proper in the premises, be and the same is hereby dismissed and discharged.

Now comes by Morgan & Seabury, his solicitors and counsel
73 and petitions this court for an order allowing your said petitioner to prosecute and appeal from such final order to the

Supreme Court of the United States under and according to the laws of the United States in such behalf made. Your petitioner is advised by counsel that there are grave doubts as to whether the arrest and detention of the petitioner referred to in the petition and exhibits attached thereto has not infringed the constitutional rights of your petitioner; that the commitment of your said petitioner and the restraint of his person referred to in said petition is without authority of law; and that the said United States marshal by whom your said petitioner was arrested as set forth in the said petition was without right or authority to arrest your petitioner and that the said United States commissioner before whom your said petitioner was arraigned as set forth in the said petition, had no jurisdiction to entertain any proceedings in respect of your said petitioner or to require bail of your said petitioner or commit him in default thereof and that your petitioner desires in good faith to submit the constitutional questions and other questions involved, to the Supreme Court of the United States for their determination.

Your petitioner will ever pray.

Dated July 5th 1904.

GEORGE W. BEAVERS.
MORGAN & SEABURY,
Attorneys for Petitioner.

Office and P. O. address, 290 Broadway, Manhattan, New York city.

74 UNITED STATES OF AMERICA, } ss.:
Eastern District of New York, }

I George W. Beavers being duly sworn, says that he is the petitioner above named and that the foregoing petition is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

GEORGE W. BEAVERS.

Sworn to before me this 5th day of July, 1904.

[SEAL.] PERCY G. B. GILKES,
Notary Public, Kings Co., N. Y.

The foregoing petition on appeal is granted and bail allowed Bond for cost is fixed at two hundred and fifty ($250.) dollars.

Done in open court this 5th day of July, 1904.

EDWARD B. THOMAS, *U. S. J.*

Endorsed: Petition on appeal. Filed July 5th, 1904.

75 Circuit Court of the United States for the Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, Appellee.

SIR: Please take notice that George W. Beavers the petitioner above named hereby appeals to the Supreme Court of the United States from the final order made and entered on the 29th day of June, 1904, dismissing his writ of *habeas corpus* and from each and every part of said order.

Dated, Brooklyn, the 5th day of July, 1904.

Yours &c.,
MORGAN & SEABURY,
Attorneys & Counsellors for Petitioner.

Office & post office address, 290 Broadway, Manhattan, New York city.

To Hon. William J. Youngs, United States attorney in and for the eastern district of New York.

To Charles J. Haubert, Esq., United States marshal in and for the eastern district of New York.

76 To B. Lincoln Benedict, Esq., clerk of the circuit court of the United States, in and for the eastern district of New York, and United States commissioner in and for the eastern district of New York.

Endorsed: Notice of appeal. Filed July 5th, 1904.

77 In the Supreme Court of the United States.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York.
Assignment of Errors.

Now comes the petitioner, George W. Beavers, by Morgan & Seabury, his counsel in connection with his petition of appeal to the Supreme Court of the United States from an order of the circuit court of the United States in and for the eastern district of New

York, entered therein on the 29th day of June, 1904, dismissing and charging the writ of *habeas corpus* and makes and files the following assignment of errors:

The court erred:

1st. In dismissing and discharging the petitioner's writ of *habeas corpus* and remanding him to the custody of the marshal.

2nd. In refusing to discharge the said petitioner.

3rd. In holding that the arrest and restraint of the petitioner's liberty is legal.

4th. In holding that your petitioner was not then and there entitled to be discharged from the custody of the marshal.

78 5th. In holding that the restraint of your petitioner is not a violation of his constitutional right not to be deprived of his liberty without due process of law, guaranteed to him by the Constitution of the United States, article fifth of the amendments thereof.

6th. In holding that the said commissioner at the time of the arrest or arraignment of your said petitioner or at any other time had any jurisdiction, right or authority to issue a warrant for the arrest of your petitioner, to require bail of your petitioner or commit your said petitioner in default of such bail.

7th. In holding that your petitioner was in custody of the said Charles J. Haubert, United States marshal in and for the eastern district of New York, and deprived of his liberty by him by due process of law.

8th. In holding that the arrest and detention of your petitioner was not in violation of his constitutional rights.

9th. For other errors appearing on the record.

By reason whereof the petitioner prays that the said order dismissing and discharging the said writ of *habeas corpus* be reversed and that your petitioner be discharged from custody.

Dated, the 5th day of July, 1904.

GEORGE W. BEAVERS,
By MORGAN & SEABURY,
His Attorneys and Counsellors.

MORGAN & SEABURY,
Counsel for Petitioner, 290 *Broadway*,
Manhattan, New York City.

Endorsed: Assignment of errors. Filed July 5, 1904.

79 Supreme Court of the United States.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, Appellee.

Know all men by these presents, that we, George W. Beavers as principal, and John McCormack and Henrietta A. Sedgwick as sureties, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty ($250.) dollars to be paid to the United States to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of July, 1904.

Whereas lately, to wit, on the 29th day of June, 1904, at a circuit court of the United States in and for the eastern district of New York, in a proceeding therein pending an order was entered dismissing the writ of *habeas corpus* obtained on the application of the above named petitioner and the said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States and filed a copy thereof in the clerk's office of
80 the circuit court to review the same.

Now, the condition of the above obligayion is such that if the said petitioner George W. Beavers shall prosecute said appeal to effect and shall answer all costs if he fails to make the said appeal good, then this obligation to be void, else to remain in full force and effect.

GEORGE W. BEAVERS. [L. S.]
HENRIETTA A. SEDGWICK. [L. S.]
JOHN McCORMACK. [L. S.]

Sealed and delivered and taken and acknowledged this 5th day of July, 1904, before me

J. G. COCHRAN,
U. S. Commissioner, E. D. of New York.

UNITED STATES OF AMERICA, *Eastern District of New York*, } ss:

John McCormack and Henrietta A. Sedgwick each being duly sworn for himself says, that he is worth more than the sum of five hundred ($500.) dollars over and above all his just debts and liabilities.

HENRIETTA A. SEDGWICK.
GEORGE W. BEAVERS.
JOHN McCORMACK.

Sworn to before me this 5th day of July, 1904.

J. G. COCHRAN,
U. S. Commissioner, E. D. of New York.

Approved as to form, amount and sufficiency.
EDWARD B. THOMAS, *U. S. J.*

Endorsed: Bond for costs. Filed July 5, 1904.

81 United States Circuit Court for the Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York, Appellee.

Due service on the 6th day of July, 1904, of a true copy of each of the foregoing papers on appeal, filed by the appellant in the above entitled cause, namely, petition of appeal, assignment of errors, order as to custody and bail, bond pending appeal, bond for costs on appeal, citation and notice of appeal is hereby admitted, on behalf of the appellee.

Dated, July 6th, 1904.

WM. J. YOUNGS,
U. S. Attorney.

Endorsed: Admission of service. Filed August 4, 1904.

82 UNITED STATES OF AMERICA, *Eastern District of New York*, } ss:

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York in the second judicial circuit, do hereby certify that the foregoing pages numbered from 1 to 81 inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause entitled:—In the matter of the petition of George W. Beavers for a writ of *habeas corpus*, George W. Beavers, appellant, against Charles J. Haubert, United States marshal in and for the eastern district of New York, appellee, as the same remain of record and on file in my office; and that it is a correct transcript therefrom and of the whole of the originals.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the borough of Brooklyn, in the city of New

York, in the eastern district of New York, in the second circuit, this 19th day of August in the year of our Lord one thousand nine hundred and four and of the Independence of said United States, the one hundred and twenty-ninth.

[The Seal of the Circuit Court, Eastern District of New York.]

B. LINCOLN BENEDICT, *Clerk*,
By J. G. COCHRAN, *Deputy Clerk*.

83 Circuit Court of the United States, Eastern District of New York.

In the Matter of the Application of GEORGE W. BEAVERS for a Writ of *Habeas Corpus*.

GEORGE W. BEAVERS, Appellant,
against
CHARLES J. HAUBERT, United States Marshal in and for the Eastern District of New York.

THE UNITED STATES OF AMERICA, *ss*:

The President of the United States to the Hon. William J. Youngs, United States district attorney for the eastern district of New York; Charles J. Haubert, Esq., United States marshal in and for the eastern district of New York; B. Lincoln Benedict, Esq., clerk of the circuit court of the United States and United States commissioner in and for the eastern district of New York:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at the city of Washington, within thirty (30) days from the date of this writ, pursuant to an appeal duly allowed by the circuit court for the eastern district of New York and filed in the clerk's office of said court on the 5th day of July, A. D. 1904, in a cause entitled In the matter of the
84 petition of George W. Beavers for a writ of *habeas corpus*, George W. Beavers, appellant, against Charles J. Haubert, United States marshal in and for the eastern district of New York, appellee, to show cause, if any, why the final order of the circuit court rendered against the said appellant as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward B. Thomas, judge of the district court of the United States, this 5th day of July, 1904.

[The Seal of the Circuit Court, Eastern District of New York.]

EDWARD B. THOMAS, *U. S. J.*

Attest:
B. LINCOLN BENEDICT, *Clerk*,
By J. G. COCHRAN, *Deputy Clerk*.

85 [Endorsed:] Crim. 2/362 United States circuit court, eastern district of New York. George W. Beavers, appellant, against Charles J. Haubert, appellee. Original Citation on appeal. Morgan & Seabury, attorneys for appellant, No. 290 Broadway, borough of Manhattan, New York, N. Y. Received and filed July 5th, 1904.

86 [Endorsed:] Supreme Court of the United States In the matter of the petition of George W. Beavers for a writ of *habeas corpus*, George W. Beavers appellant *versus* Charles J. Haubert, United States marshal in and for the eastern district of New York, appellee Record Morgan and Seabury attorneys for appellant Wm. J. Youngs U. S. attorney and attorney for appellee. Appeal from the circuit court of the United States for the eastern district of New York.

Endorsed on cover: File No. 19,455. E. New York C. C. U. S. Term No. 355. George W. Beavers, appellant, *vs.* Charles J. Haubert, United States marshal in and for the eastern district of New York. Filed August 23d, 1904. File No. 19,455.

Supreme Court of the United States,

OCTOBER TERM, 1904.

GEORGE W. BEAVERS,
Appellant,

against

CHARLES J. HAUBERT, United States Marshal, in and for the Eastern District of New York.

No. 354.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from a final order made at a Stated Term of the District Court of the United States in and for the Eastern District of New York on the 5th day of July, 1904, dismissing appellant's writs of *habeas corpus* and *certiorari* and remanding him to the custody of the Marshal (fols. 205–211).

On July 16th, 1903, two indictments were returned by a Federal Grand Jury in the Circuit

Court of the United States in the Eastern District of New York, and on July 25th, 1903, a third indictment was returned in the same Court, charging the appellant with violations of Sections 1781 and 1782 of the United States Revised Statutes (fols. 3, 24, 41 and 61). A proceeding was thereafter instituted in the Southern District of New York to compel the removal of the appellant to the Eastern District of New York, for the purpose of securing his arraignment and trial on these indictments before the Circuit Court in the latter district (fol. 3). This proceeding resulted in a warrant of removal to the Eastern District of New York signed by District Judge Holt on the 10th day of November, 1903. Pursuant thereto and to an order entered in the Circuit Court of the United States for the Southern District of New York, upon the mandate of this Court issued in the case of *George W. Beavers* vs. *William Henkel* (194 U. S., 73), the appellant surrendered himself and gave recognizance for his appearance in the Circuit Court of the United States for the Eastern District of New York at the next regular term thereof for the trial of bail cases (fols. 3–5). On May 28th, 1903, Hon. William J. Youngs, United States Attorney for the Eastern District of New York, notified appellant to appear before the United States Circuit Court in that district on June 1st, 1904, to plead to the indictments there pending against him (fols. 5, 79).

In response to this notice the appellant appeared and his arraignment for pleading was moved by the District Attorney (fol. 5). The appellant was thereupon accorded one week's time in which to prepare and make certain motions with reference to the in-

dictments. On the 8th day of June, 1904, appellant appeared before the Circuit Court to plead to the indictments (fol. 5). His counsel also appeared and were prepared to argue motions to quash, and, in the event of an adverse decision, to argue for bills of particulars as to each of these indictments. At this time the United States Attorney refused to proceed with the prosecution of the appellant before the Circuit Court in the Eastern District of New York, but stated that it was his intention instead to institute proceedings for the removal of the accused to the District of Columbia (fol. 5).

The Court thereupon adjourned the motions from time to time, directing the appellant to appear whenever required, and enlarged him to bail upon the former recognizance (fols. 6, 75). While the appellant was in attendance upon the Circuit Court for the purpose of pleading to the indictments there pending, and while he was still in the custody of that Court and by it enlarged to bail, he was on the 8th day of June, 1904, arrested and taken into custody by the Marshal of the Eastern District of New York upon a warrant to apprehend issued by B. Lincoln Benedict, Esq., a Commissioner of the United States for the Eastern District of New York, on the 3d day of June, 1904 (fols. 6, 11). Upon this warrant the appellant was on the same day taken before the Commissioner. The complaint on removal, verified by Frank E. Little, a Post Office Inspector, set forth the finding of an indictment against the appellant in the Supreme Court of the District of Columbia on the 5th day of October, 1903, purporting to charge a violation of Section 5501 of the United States Revised Statutes, and

asked that appellant be held to await a warrant of removal to the District of Columbia (fols. 8, 101–109).

The appellant, having protested against his arrest and objected to the jurisdiction of the Commissioner, demanded a hearing under Section 1014 of the United States Revised Statutes, which hearing was accorded him (fols. 124–202). On June 17th, 1904, the appellant secured from the Circuit Court of the United States in the Eastern District of New York, a writ of *habeas corpus* to relieve him of his unlawful arrest under the Commissioner's warrant to apprehend of June 3d, 1904. This writ is the subject of the appeal in case No. 355 upon the Calendar of this Court for the October Term, 1904 (see record in that case fols. 42–44). At the hearing the prosecution offered in evidence an examplified copy of the indictment filed in the Supreme Court of the District of Columbia and a duplicate of the original warrant of arrest (fols. 130–142), established the identity of the accused, and rested (fols. 130–142).

After hearing the appellant's witnesses (fols. 143–202), and denying his motion to dismiss (fols. 199–202), the Commissioner on June 29th, 1904, committed him to the custody of the Marshal to await the warrant of removal of the District Judge (fol. 202). Thereafter and on July 5th, 1904, simultaneously with the application of the prosecuting attorney for a warrant of removal to the District of Columbia, appellant secured from the District Court writs of *habeas corpus* and *certiorari* to review his arrest and commitment (fols. 81–83). Return was made, and on July 5th, 1904,

both writs were dismissed (fols. 205–212) and the appellant was remanded to custody. Thereupon this appeal was duly allowed and perfected (fols. 212–232).

The appellant upon this appeal contends:

First.—That his arrest under a Commissioner's warrant on the 8th day of June, 1904, and subsequent commitment, while appellant was already in custody of the Circuit Court of the United States, was unlawful because it deprived him of his liberty without due process of law.

Second.—That the refusal of the District Attorney to proceed with the prosecution and the failure of the Court below to discharge Beavers from the arrest complained of deprived him of his constitutional right to a speedy trial in the Eastern District of New York.

Third.—That the positive evidence adduced by the appellant before the Commissioner was such as wholly to deprive the indictment of its *prima facie* probative force, and that the decision of the Commissioner was in effect a determination that the indictment was conclusive evidence.

The errors duly assigned and now relied upon by the appellant are as follows:

The Court erred:

In refusing to discharge the said petitioner.

In holding that the arrest and restraint of the petitioner is legal.

In holding that the restraint of your petitioner is not a violation of his constitutional right not to be

deprived of his liberty without due process of law, guaranteed by the Constitution of the United States, in Article Fifth of the Amendments thereof.

In holding that the arrest and detention of your petitioner was not in violation of his constitutional rights.

In holding that the said Commissioner at the time of the arrest or arraignment of your said petitioner or at any other time had any jurisdiction, right or authority to issue a warrant for the arrest of your petitioner, to require bail of your petitioner or commit your petitioner in default of such bail.

In holding that the probative force of the said indictment was not utterly destroyed by the direct and positive testimony adduced on behalf of the petitioner.

In holding that there was probable cause to believe the petitioner guilty of a crime against the United States in the District of Columbia.

In holding that the said indictment was conclusive proof of probable cause.

ARGUMENT.

I.

THE ARREST AND COMMITMENT OF THE APPELLANT ON WARRANTS ISSUED BY A UNITED STATES COMMISSIONER IN A PROCEEDING BROUGHT TO EFFECT HIS REMOVAL TO THE DISTRICT OF COLUMBIA, WHILE HE WAS IN THE CUSTODY OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK FOR TRIAL, AND SUBJECT TO ITS JURISDICTION, WAS VOID, BECAUSE IT WAS AN UNLAWFUL INTERFERENCE WITH THE JURISDICTION OF THE CIRCUIT COURT OF THE UNITED STATES IN THE EASTERN DISTRICT OF NEW YORK, AND A VIOLATION OF THE APPELLANT'S CONSTITUTIONAL RIGHTS.

On June 8th, 1904, when the appellant was arrested under the Commissioner's warrant to apprehend, issued on June 3rd, 1904, he was already in the custody of the law. A warrant directing his removal to the Eastern District of New York had been issued (fol. 72). He had entered into a recognizance (fol. 75) in the sum of ten thousand dollars, the condition of which was that he should personally appear before the Circuit Court of the United States for the Eastern District of New York, on the first day of the next regular term for the trial of bail cases, then and there to answer unto an indictment pending therein, and "then and there render himself unto the jurisdiction of the said

Court and obey and abide the orders of said Court and not depart therefrom without the leave of said Court." At the request of the United States Attorney (fol. 79) he had appeared before the Circuit Court. Process had been issued for his apprehension, and by the aid of it his presence before the Court had been secured. His arraignment upon the indictments there pending against him had been actually moved by the prosecuting attorney (fol. 5). Motions in respect of the indictments were there pending undetermined. He appeared from time to time at the Court's direction and in every way rendered himself amenable to the jurisdiction of the Circuit Court of the United States for the Eastern District of New York. This jurisdiction had not only attached but was well started toward completion. All of these events occurred prior to the issuance and execution of the Commissioner's warrant. It cannot, therefore, be disputed that at this time the Circuit Court had acquired complete and primary jurisdiction over the person of the accused.

In criminal cases priority of jurisdiction is determined by the date of service of process (*U. S.* vs. *Lee*, 84 Fed., 631; *Craig* vs. *Hoge*, 28 S. E. (Va.), 317; *Union Mutual Life Ins. Co.* vs. *University of Chicago*, 6 Fed., 443; *Owens* vs. *R. R. Co.*, 20 Fed., 10; *Wilmer* vs. *R. R. Co.*, 30 Fed. Cases, 73; *Herndon* vs. *Ridgway*, 17 How., 424; *Chaffee* vs. *Hayward*, 20 How., 208, 215; *Boswell's Sons* vs. *Otis*, 9 How., 336, 348. *Pennoyer* vs. *Neff*, 95 U. S., 714; *Mexican Central Ry.* vs. *Pinkney*, 149 U. S., 194, 209).

The fact that Beavers had given bail on the first arrest and was not in actual custody of the

Marshal when the second arrest took place is immaterial (*In re Beavers*, 125 Fed., 988). By admission to bail the appellant had not been relieved from custody. His prison walls had been enlarged so that temporarily they surrounded the limits of the Eastern District of New York. It cannot be said that a person who cannot leave a defined territory is not restrained of his liberty. If Beavers was in custody pending the trial of these indictments, he was in theory of law in the possession of the Marshal, which possession was that of the Circuit Court. "When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment" (*Taylor* vs. *Taintor*, 16 Wall., 371). The rule that a person admitted to bail is potentially in custody, and so remains until discharged from imprisonment, is as old as the common law. Bacon's Abridgement says: "His bondsmen are his gaolers of his own choosing." In *Anon's Case* (6 Mod., 231), it is said: "The bail have their principal on a string, and they may pull the string whenever they please and render him in their own discharge." The principle is established by many authorities. (*Cosgrove* vs. *Winney*, 174 U. S., 68; *In re Grice*, 79 Fed., 633; *U. S.* vs. *Stevens*, 16 Fed., 105; *Turner* vs. *Wilson*, 49 Ind., 581; *Divine* vs. *State*, 5 Sneed., 625; *Levy* vs. *Arnsthall*, 10 Grat. (Va.), 641; *Ex parte Gibbons*, 1 Atk., 238; Spear on Extradition, p. 445; Petersdorf on Bail, pp. 91, 406).

It is a fundamental maxim or principle of jurisprudence that where the jurisdiction of a competent court has attached either to a person or to a thing,

that jurisdiction remains exclusive in effect until it has wrought its function. This is the principle invoked by the appellant in this case. It has been applied in many distinct classes of cases and illustrations of its application abound.

In every instance where a conflict of jurisdiction has arisen between a State and Federal court, but one rule has been adopted. The Court whose jurisdiction has first attached to the person or thing, has universally held and retained it until its completion. No other Court has been permitted by its process to interfere with the jurisdiction of the Court which has first attached. Few propositions are more clearly established by judicial decision (*Byers* vs. *McAuley*, 149 U. S., 608, 614, 615; *Hagan* vs. *Lucas*, 10 Peters, 400; *Taylor* vs. *Carryl*, 20 How., 583; *Peck* vs. *Jenness*, 7 How., 612, 625; *Freeman* vs. *Howe*, 24 How., 450; *Ellis* vs. *Davis* 109 U. S., 485,498; *Krippendorf* vs. *Hyde*, 110 U. S., 276, 280; *Covell* vs. *Heyman*, 111 U. S., 176; *Borer* vs. *Chapman*, 119 U. S., 587, 600; *In re Chambers, Calder & Co.*, 98 Fed., 866; *Jordan* vs. *Taylor*, 98 Fed., 643; *Keegan* vs. *King*, 96 Fed., 758; *Chapin* vs. *James*, 11 R. I., 87; *The E. L. Cain*, 45 Fed., 367; *Moran* vs. *Sturges*, 154 *U.* S., 256, 269, 279; *Ex parte Chetwood*, 165 U. S., 443, 460; *Pac. Coast S. S. C.* vs. *Bancroft Whitney Co.*, 94 Fed., 186; *Yonley* vs. *Lavender*, 21 Wall., 276; *Sharon* vs. *Terry*, 36 Fed., 337; aff'd 131 U. S., 40).

The same principle is universally applicable where Federal and State Courts each claim jurisdiction over the same person at the same time (*Abelman* vs. *Booth*, 21 How., 506; *Tarble's Case*, 13 Wall.,

397; *Robb* vs. *Connelly*, 111 U. S., 624; *In re Spangler*, 11 Mich,, 298; *In re James*, 18 Fed., 853).

It has also been uniformly adopted whenever a State has sought the rendition of a fugitive from another State having him in custody. Though the duty of rendition is ordinarily absolute, it is settled in such cases that "where a fugitive whose surrender is demanded is held in custody in the State upon which the demand is made on account of an offense committed therein, the duty to surrender is postponed until the existing charge against the prisoner has been satisfied" (Am. & Eng. Encyc. of Law, Vol. 12, p. 604; *Matter of Troutman*, 24 N. J. Law, 634; *Matter of Briscoe*, 51 How. Pr., 422; *Hobbs* vs. *State*, 22 S. W. R. (Tex.), 1035; *Taintor* vs. *Taylor*, 36 Conn., 242; *Taylor* vs. *Taintor*, 16 Wall., 366; *Ex parte Rosenblat*, 51 Cal., 285; Clark Cr. Proc., p. 63; Spear on Extradition, pp. 442–445).

Equally established is its application whenever Federal Courts of different districts have asserted jurisdiction at the same time over the same personal property (*Re Miller*, 30 Fed., 895; *Ames* vs. *Ry. Co.*, 60 Fed., 967, 974; *Clyde* vs. *Richmond & D. R. Co.*, 65 Fed., 336; *Chattanooga Terminal Ry. Co.* vs. *Felton*, 69 Fed., 273, 283; *N. Y. Security & Trust Co.* vs. *Equitable Mtge. Co.*, 71 Fed., 556; *Wiswall* vs. *Sampson*, 14 How., 60).

The appellant contends that this principle is not restricted in its application to questions of jurisdiction between courts of different sovereignties, but is applicable wherever two courts subject to the same general sovereignty and existing under the same judicial system seek to exercise criminal jurisdic-

tion over the same person for antagonistic purposes at the same time. In its precise application to the case at bar the authorities relating to the question are not numerous. But though few, the reported decisions dealing with the subject indisputably recognize that the principle of the exclusiveness of a jurisdiction which has once attached is not confined in application to conflicts between courts of different sovereignties, but is applicable between co-ordinate Federal Courts existing under the same general constitutional authority.

In re Johnson, Petitioner (167 U. S., 125), this Court distinctly held that the principle here invoked was decisive in conflicts of jurisdiction between different Federal tribunals.

In that case, on July 24th, 1896, a warrant was issued by a Commissioner for the Southern District of Indian Territory to arrest one Johnson for a crime alleged to have been committed within that district on that day. Subsequently and on October 9th, he was indicted at a regular term of the United States Court for that district and on October 17th was arraigned, tried and convicted. On July 25th a warrant was issued by a Commissioner of the United States for the Eastern District of Texas, charging Johnson with the commission of the same crime. The Marshal for the Eastern District of Texas demanded the surrender of the prisoner from the custody of the Marshal in the Southern District of Indian Territory, which surrender was refused. Mr. Justice Brown, in sustaining the jurisdiction of the Court for the Southern District of Indian Territory, which had first attached to the person of the accused, said:

"In this connection, jurisdiction of the case,

i. e., the crime, is undistinguishable from jurisdiction of the person who is accused of the crime. *We know of no reason why the rule so frequently applied in cases of conflicting jurisdiction between Federal and State courts should not determine this question.* Ever since *Abelman* vs. *Booth* (21 How., 506), it has been the settled doctrine of this Court that a court having possession of a person or property cannot be deprived of the right to deal with such person or property until its jurisdiction is exhausted, and that no other court has the right to interfere with such custody or possession. This rule was affirmed in *Tarble's Case*, (13 Wall., 397); in *Robb* vs. *Connelly*, (111 U. S., 624); in *re Spangler* (11 Mich., 298); and with reference to personal property, has been so often restated as to have become one of the maxims of the law."

In *In re Beavers* (125 Fed., 988) a question almost precisely similar to the case at bar was decided by District Judge Holt, of the Southern District of New York, in favor of the accused. While Beavers was in the Southern District of New York, and after he had been arrested and brought before a Commissioner in a proceeding to secure his removal to the Eastern District of New York, the Department of Justice instituted before the same Commissioner four other proceedings, the purpose of each of which was to effect his removal to the District of Columbia. The learned District Judge held that these proceedings could not co-exist, and said :

"I think that in such a case, although the issuance of the warrant was proper, it would be the duty of the Marshal not to execute it, but to hold it pending the decision of the Commissioner in

the proceeding for the removal of the defendant from this District to the Eastern District of New York. If for any reason the Commissioner should decide in the first proceeding that the petitioner should not be removed, then it would be the duty of the marshal to arrest him and hold him under the warrant of the second proceeding, but until the first proceeding is determined, I think that no other arrest can be permitted. * * * *The only possible rule is that a Court which has in its custody a person charged with a crime, has exclusive control and jurisdiction until the question of his guilt or innocence is determined, and, if he is found guilty, until the period of his imprisonment has expired.*"

On the argument of this writ before the Court below, it was disposed of upon the opinion delivered in *In re Beavers* (131 Fed., 366) (see record of *Beavers* vs. *Haubert*, Calendar No. 355, fol. 54). The learned Court conceded that when the jurisdiction of a competent Court has once attached to a person or thing, that jurisdiction should remain exclusive in effect until it has wrought its function ; but contended that this principle has no application to the present case, because the Court seeking to exercise jurisdiction over the appellant was subject to the same sovereignty, and existed under the same judicial system as the Court from which a removal was sought. The Court further held, that even if the principle did apply, the latter Court might at its pleasure waive and surrender its jurisdiction to another Court, subject to the same general sovereignty.

As has been already shown, the mere fact that two Courts which seek to assert jurisdiction over the same person at the same time are a part of the

same judicial system, cannot take the case out of the principle which controls every other instance of conflicting jurisdiction.

Neither the decision in the *Johnson* case (167 U. S., 125) nor in the *Beavers* case (125 Fed., 988), nor in the receivership cases (*Re Miller*, 30 Fed., 895; *Clyde* vs. *Richmond Ry. Co.*, 65 Fed., 336; *N. Y. Security & Trust Co.* vs. *Equitable Co.*, 71 Fed., 556) is reconcilable with the view that the principle of the exclusiveness of jurisdiction is limited to conflicts between courts of different sovereignties. Instead, as this Court said in *Buck* vs. *Colbath* (3 Wall., 344–349): "This principle is essential to the dignity and just authority of every court and to the comity which should regulate the relations between all courts of concurrent jurisdiction." The reasons are obvious. Without its existence, different courts and different officers of co-ordinate courts would be brought into unseemly collision, each striving to possess the same person or thing at the same time. The possession of one officer under due process would afford no exemption to the person or property so taken into custody from another arrest or further levy under process issued from another court. It would be the duty of the officer having lawful possession to defend by all necessary force that possession, even though the person seeking to disturb it should be an officer authorized by another co-ordinate court to take possession of the person or thing in question. Such a condition would be intolerable. The only possible rule is that a jurisdiction once attached must be exclusive, and a custody once acquired not to be legally interfered with by any other officer or tribunal whatever, of equal or in-

ferior rank, irrespective of the source of its creation, until the jurisdiction is exhausted or the custody relinquished. No other rule is reconcilable with that forbearance which courts of co-ordinate jurisdiction administered under a single system are said to exercise towards each other by avoiding interference with each other's process (*Covell* vs. *Heyman*, 111 U. S., 176).

No other rule is consistent with the obligation owed in criminal cases by every court to the citizens of its own district. The crime for which a removal was sought involved no greater turpitude than those for which the accused was about to be tried (U. S. Revised Statutes, Sections 1781, 1782, 5501). It is certainly more important to the citizens of the Eastern District of New York and to the accused, and quite as important to the country at large, that the accused be tried and punished for crime committed in the Eastern District of New York, the place where he resides and has his home, or acquitted there of the charges pending against him, as that he should be taken to another district and tried, punished or acquitted for another crime no more grave than that with which he is charged in the Eastern District of New York. If, as this Court has said, with reference to rendition under these circumstances, "it is absurd to say that the Constitution requires that he should be surrendered to the other State on a requisition being made, for the State surrendering him would have an equal right to require that he be returned again," it is equally unreasonable to direct the removal of the accused person to the District of Columbia in the present case, before the Circuit Court of the East-

ern District of New York has fulfilled its proper functions, because it would have an equal right to require his return. Such an act is without judicial precedent. It might even be made a dangerous precedent because, within the principle of the decision of the Court below, before he can be tried in the District of Columbia, the accused may be again removed and returned to the Eastern District of New York, or taken from district to district without trial in any district, as the Department of Justice may elect. That this result is not to be apprehended in the present case is immaterial, for statutory provisions should be interpreted in the light of all that may be done under them (*Beavers* vs. *Henkel*, 194 U. S., 73). An orderly administration of justice requires the retention by the Circuit Court of the United States of the Eastern District of New York of a jurisdiction once acquired.

We refer by way of analogy to the reasoning in similar cases arising in interstate rendition proceedings.

In *Matter of Troutman* (24 N. J. L., 634) the Court declined on *habeas corpus* to deliver up an accused person upon the requisition of the Governor of the State of Pennsylvania, since it appeared that the person was detained by civil process in the State of New Jersey. The same ruling was made in *Matter of Briscoe* (5 How. Pr., 422), where it was forcibly said :

" When a party is detained in one State because the laws of that State have claims upon him, can such a person be extradited and taken into another State before the justice of the State which holds him has first been satisfied ? In other words, is the

right of the State to demand the alleged fugitive in order that he may be compelled to answer to its laws, superior to that of the State which holds him for a similar claim? If it is, then State comity is above State preservation, and the obligation of man to his fellows is superior to that which he owes to himself. There can be no middle ground upon the question before us. The Constitution of the United States, if it means that the surrender must be made, though the State holding the fugitive has demands upon him, must require his delivery in every case without regard to the right of the State in which he is. If he is then wanted for murder committed within its jurisdiction, he must be surrendered even though demanded to answer elsewhere for simple petit larceny. This extreme case is put to illustrate the danger of the position taken."

In *Taintor* vs. *Taylor* (36 Conn., 242) where the respective rights of the States of Connecticut and Maine to the rendition of an accused person from the State of New York were discussed, it was pointed out that if he "had remained in this State (Connecticut), he would not have been surrendered on a requisition made by the Executive of the State of Maine. It was more important to this State and just as important to the country at large, that he should be punished for crime committed here, as that he should be taken to Maine and punished for crime committed there. The requirement of the Constitution was never intended to apply to such a case. This is obvious; for if a party commits crime in two different States, and one of them has him in custody awaiting trial, it is absurd to say that the Constitution requires that he should be surrendered to the other State on requisi-

tion being made, for the State surrendering him would have an equal right to require that he be returned again. *This State had a superior right to him, inasmuch as she had moved first to punish him, if guilty, for crime committed here.*" These views were approved in *Taylor* vs. *Taintor* (16 Wall., 366) and the judgment of the State Court affirmed. "The legal principle involved in this decision," says Spear in his work on Extradition, at page 445, "is that where jurisdiction has already attached to a case, it is, in the absence of any provision to the contrary, to be deemed exclusive until it has wrought its function. This jurisdiction being then operative takes precedence of the one claimed until its purpose shall have been completed. The same rule operates where the party is by bail released from actual confinement. He is to all intents and purposes still in the custody of law, as a prisoner against whom the law has been put in force and in respect to whom its claims are not yet determined."

The Court below, while not denying that all jurisdiction is in its nature exclusive in effect, held that the removal of an accused person constituted a waiver of the jurisdiction of the Court ordering it, which that Court in its discretion might make, and of which the accused was not entitled to complain. However true this may be, it can have no application to the present case, because it affirmatively appears that the Circuit Court never abandoned its jurisdiction of this appellant.

The record shows that his recognizance was in full force and effect at the time of the arrest complained of and at the time the writs were secured

(fols. 6-8). The existence of this recognizance is conclusive evidence that the Circuit Court of the Eastern District of New York has not waived its jurisdiction over the accused, but asserts and exercises it to-day.

By virtue of this recognizance, the appellant was and is in the potential custody of the Circuit Court of the United States (*Taylor* vs. *Taintor*, 16 Wall., 371; *In re Beavers*, 125 Fed., 988; *Cosgrove* vs. *Winney*, 174 U. S., 68). The purpose of that custody was and is for trial by the Circuit Court in the Eastern District.

The proceeding for Beavers' removal was begun by the warrant of a Commissioner, an officer of the District Court, and could, if effective for any purpose, culminate only in a warrant of removal signed by the District Judge (R. S., 1014).

We contend that neither the Commissioner of the District Court nor the District Judge, sitting as such, had power to interfere with the custody of the Circuit Court, and waive its jurisdiction by effecting the removal of an accused person.

Suppose the sureties on Beavers' recognizance had surrendered him in their own discharge, and while the Marshal held him in the custody of the Circuit Court to await its mandates, a new warrant had been placed in the Marshal's hands issued by a United States Commissioner, ordering his appearance before the Commissioner, at the day and hour on which his appearance was required before the Circuit Court; or suppose a warrant were issued by a District Judge or Court ordering the Marshal to relinquish altogether this custody and deliver the accused to another

tribunal; which tribunal would the Marshal obey? Would the process of the Commissioner or of the District Court or Judge supercede the process of the Circuit Court; or would its execution be void in so far as such interference was attempted?

In *Hobbs* vs. *State* (22 S. W. Rep., 1035), the Court of Criminal Appeals of Texas discharged on *habeas corpus* a person arrested under an executive warrant of the Governor of Texas, issued on a requisition from the Governor of Tennessee, on the ground that the Courts of the State of Texas had acquired a prior criminal jurisdiction over the person of the accused. "This jurisdiction," said the Court, "being operative, takes precedence of the one claimed until its purpose shall have been completed. *The Governor of this State has no power by the issuance of his warrant to arrest its action.*"

A United States Commissioner is a subordinate ministerial officer, an arm or branch of the District Court, and is himself neither court nor judge (*U. S.* vs. *Allred*, 155 U. S., 595; *Todd* vs. *U. S.*, 158 U. S., 278; *Rice* vs. *Ames*, 180 U. S., 371–378; *U. S.* vs. *Schumann*, 2 Abb. U. S., 523; *U. S.* vs. *Jones*, 134 U. S., 483; *Re Ellerbe*, 13 Fed., 530; *In re Perkins*, 100 Fed., 950; *Ex parte Dole*, 7 Phila., 595). Even conceding the right of the Commissioner to *issue* process against the appellant, we contend that such process could not be lawfully *executed* by the Marshal against him so long as he was in the custody of a court of superior jurisdiction (*In re Beavers*, 125 Fed., 988; *Hobbs* vs. *The State*, 22 S. W. Rep., 1035; *Matter of Troutman*, 24 N. J. Law, 634; *Higgins* vs. *Dewey*, 39 N. Y. Rep., 94).

When Beavers was absolutely discharged from the custody and jurisdiction of the Circuit Court, then the Commissioner's warrant might properly be executed; but until that time no new arrest should have been permitted.

Whether or not the Circuit Court might have waived or relinquished its jurisdiction is immaterial. This was never done: first, because the appellant's recognizance was not cancelled, his appearance was ordered from time to time simultaneously with the progress of these proceedings and, if we may refer to facts *de hors* the record, his attendance on the successive terms of the Circuit Court of the Eastern District of New York has been required to the very date of this argument; and second, because, if the arrest of the appellant herein under a Commissioner's warrant was void, no subsequent willingness of the Circuit Court to waive its jurisdiction could give the arrest validity.

If the arrest of the appellant, while he was already *in custodia legis*, was void and deprived him of his liberty without due process of law, it follows that the execution of the Commissioner's warrant of commitment under which he is now held, was a further violation of his rights, which requires his discharge from such custody, in order that he may be brought to trial upon the charges now pending against him in the Eastern District of New York.

II.

THE REFUSAL OF THE DISTRICT ATTORNEY TO PROCEED WITH THE PROSECUTION AND THE FAILURE OF THE COURT BELOW TO DISCHARGE BEAVERS FROM THE ARREST COMPLAINED OF DEPRIVED HIM OF HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL BY JURY IN THE EASTERN DISTRICT OF NEW YORK.

When Beavers gave his recognizance for appearance before the Circuit Court, the process of that Court had become operative. When he appeared and his arraignment was moved, he became entitled to have his trial in that district proceed without unreasonable delay. But the District Attorney refused to proceed, and instead, instituted proceedings for his removal from the District. Since that time the District Attorney has had ample opportunity to prepare for trial, and many terms of the Court at which the accused in the usual course of procedure could have been tried, have been permitted to expire without such trial. The refusal of the District Attorney to proceed, and of the learned Court below to discharge appellant, have prevented this trial. When this was urged before the Court below, the Court held that a removal of the accused from the Eastern District of New York for trial in the District of Columbia did not impair his constitutional right to a speedy trial by jury, since the Constitution does not

assure to him a speedier trial in this District than in the District of Columbia, or does not permit him to select the forum in which he shall first be tried.

The jurisdiction of the Circuit Court has attached to him. The jurisdiction of the Supreme Court of the District of Columbia has not attached. The Constitution does not guarantee a speedy trial in the District of Columbia for crimes committed in the Eastern District of New York. The Constitution expressly prohibits such a trial when it provides by its Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

This article of the Constitution entitles an accused person to a trial at the earliest opportunity after allowing reasonable time to the prosecution to prepare for trial (Sutherland's Notes on the U. S. Constitution, p. 664; *U. S.* vs. *Fox*, 3 Mont., 312; see monograph note to *In re Begerow*, 85 Am. St., 178–204). And it is the duty of the prosecution diligently to prosecute, without vexatious, capricious or oppressive delays (*Nixon* vs. *State*, 41 Am. Dec., 601). Judge Cooley in his work on Constitutional Limitations, 7th Edition, p. 440, says: "When a person charged with crime is willing to proceed at once to trial, no delay on the part of the prosecution is reasonable, except only that which is necessary for proper preparation and to secure the attendance of witnesses."

Beavers has made no selection of the place of trial. It is the Government, not the accused, which

selected the Court in the Eastern District of New York as the forum before which he should first be tried. Is this constitutional guarantee fulfilled or is it violated when a Court, having complete jurisdiction to try the accused, refuses to hear and determine the issue before it, and attempts to relinquish its jurisdiction by permitting the removal of the accused from the State and district wherein he stands charged with crime, to a district where trial upon those charges is impossible? The provision of the Constitution which guarantees him a speedy trial in the Eastern District of New York for crime committed there is not fulfilled by according him a trial, no matter how speedy, in the District of Columbia for crime committed there.

It may be said that if the accused be retained and tried in the Eastern District of New York, this would violate his right to a speedy trial in the District of Columbia. This cannot be, since the Courts of the District of Columbia have not as yet obtained jurisdiction over the accused. So long as a person accused of crime remains beyond the jurisdiction of the Court wherein he is charged, it can not be that he is entitled to the benefits of this provision of the Constitution. Otherwise he might, by remaining beyond the jurisdiction for an indefinite period of time, avail himself of this provision of the Constitution and, when sufficient time had elapsed, move for a discharge upon the ground that he had not been accorded a speedy trial. Clearly, an accused person does not become entitled to a speedy trial until the Court in which the indictment is found has acquired jurisdiction over his person and a speedy trial has thus been rendered possible.

The vigor of Beavers' late struggle, commented upon by the learned Court below, is not inharmonious with a desire for a speedy trial in the Eastern District of New York. It was an earnest effort to secure, not an indefinite postponement of trial, but a preliminary hearing and an examination upon the indictments. It arose from confidence in his ability to defeat the indictments against him in the Southern District, should he be accorded such a preliminary hearing as he conceived to be his right. So soon as this Court had rendered its decision, he prepared himself for trial upon the merits. Since that time the Government and not the accused, has attempted to evade a trial of the issues in the Eastern District.

When an indictment was found by the Grand Jury of the Eastern District of New York charging Beavers with the commission of crime against the United States within that District, and process had issued and had been duly executed, and he had appeared ready to plead and had demanded his trial, he became invested with a constitutional right to a speedy trial, of which neither the executive nor the judiciary could deprive him.

III.

THE POSITIVE EVIDENCE ADDUCED BY THE APPELLANT BEFORE THE COMMISSIONER WAS SUCH AS WHOLLY TO DEPRIVE THE INDICTMENT OF ITS PRIMA FACIE PROBATIVE FORCE, AND THE DECISION OF THE COMMISSIONER WAS IN EFFECT A DETERMINATION THAT THE INDICTMENT WAS CONCLUSIVE EVIDENCE.

Since the decision in *Beaver* vs. *Henkel* (194 U. S., 173) an indictment must, in a proceeding for removal under Section 1014 be deemed to constitute *prima facie* evidence, which, if unrebutted, will sustain a finding of probable cause. But this Court did not decide and has never held that an indictment might be accepted in such a proceeding as conclusive evidence of the facts therein set forth, in the face of primary evidence rebutting its material allegations. We contend that the effect of the Commissioner's finding in this proceeding, was to give to the copy of the indictment offered in evidence the effect of conclusive proof of the existence of probable cause, although every material allegation of this indictment was rebutted by competent primary proof.

At the hearing, a copy of the indictment was the only evidence offered of the petitioner's guilt. Six witnesses were called for the accused and he himself made a statement in his own behalf. The indictment alleged that Beavers on October 6th, 1900, entered into a corrupt agreement with W. Scott Towers, as agent of the Elliott-Hatch Book-

typewriter Company, whereby Towers promised to pay to Beavers on behalf of the company, twenty-five dollars out of each two hundred dollars paid to the company by the Government, and that Beavers on July 11th, 1901, received from Towers, as agent of the company, a draft for three hundred and fifty dollars, intending to have his decision and action in a matter then pending, or thereafter to be brought before him, in his official capacity, influenced thereby.

Henry J. Gensler, testified that from August, 1897, to December, 1899, he acted as the local agent and representative of the Elliott-Hatch Booktypewriter Company in the City of Washington (fol. 147), and sold book typewriters such as were bought by the Post Office Department to the trade in general for two hundred dollars a machine. This was the usual price paid for the machines and the figure at which they were bought by the Post Office Department. He did not know of sales being made for any less sum (fol. 147). He further testified that he was familiar with the sales made in Washington in 1900. That he knew nothing of the alleged agreement of October 6th, 1900, between Beavers and Towers and had no knowledge of the alleged payment of July 11th, 1901, or whether or not there was at that time any matter pending before Beavers relating to the machines in question, which required his official decision or action (fols. 150, 151). Charles Flint testified that from February, 1901, to March, 1903, he acted as assistant to the manager and to the treasurer of the Elliott-Hatch Booktypewriter Company (fol. 154). The majority of the machines bought

by the Post Office Department were known as number five's, which could not ordinarily be bought at less than two hundred dollars each (fol. 156). He was familar with the financial affairs of the Company, and if in 1901 the company had paid any money to Beavers or to Towers for Beavers, he would have known of it (fol. 158), but he knew of no such payments and had no knowledge that Towers was at any time authorized by the Company to pay Beavers any money whatever (fol. 158). He knew nothing whatever of the alleged agreement between Beavers and Towers, or the receipt by Beavers of any of the Company's funds (fol. 160). Howard M. Jacobs testified that from March 15th, 1900, to March 1st, 1903, he was continuously employed by the Company as its bookkeeper and cashier. He knew how and for what purpose the funds of the Company were disbursed (fol. 164) and that no payment whatever was made to Beavers, or caused to be paid to Beavers, by the Company or any of its agents (fol. 164). He had no knowledge whatever of the alleged agreement or of any facts relating to it (fol. 165). M. D. Helm testified that some years prior to October 6th, 1900, he had made an effort to introduce the Elliott-Hatch Booktypewriter into the Post Office Department, and for this purpose in 1898 had called upon Perry S. Heath, then First Assistant Postmaster General (fol. 171). He discussed the merits of the machine with the First Assistant Postmaster General, and received from him a card of introduction to some one in the Department. After this some machines were installed, but the witness never had any conversation with Beavers with reference to

their installation, and so far as he knew, Beavers had nothing whatever to do with the matter (fol. 172). He knew nothing of the alleged agreement nor of the supposed receipt of money by Beavers from Towers (fol. 173). He had known Towers for twenty years and was thoroughly familiar with his methods of doing business (fol. 174). He knew that Towers had made a practice of purchasing and cashing checks and drafts for his friends, and in fact that this was almost a daily occurrence (fol. 75). To support his statements, he produced a check (fols. 90, 176, 177) given by him on one occasion to Towers, who in exchange had given him a New York draft for the same amount. The witness stated that this transaction was representative of many others (fol. 178). Evander H. Schley testified that since January 1st, 1899, he has been Treasurer and Secretary of the Elliott-Hatch Book-typewriter Company. He had entire charge of the finances of the company and was familiar with all checks drawn and all moneys paid out by the company. He testified that if the company had paid Towers any money for the purpose of influencing Beavers' official judgment with reference to the machines, he would have known it, but that he did not know of any such payment being made (fol. 184). He had no knowledge whatever of the existence of the alleged agreement between Beavers and Towers, knew nothing of the alleged payment of funds to Beavers, and knew that the company did not authorize Towers to make any such payment (fol. 186). The testimony of the plaintiff, Little, disclosed that he had no personal knowledge of any of the transactions set forth in the indictment, and

that his only source of information was the indictment (fol. 187).

For the purpose of making a statement in his own behalf, Beavers took the stand and was sworn (fol. 191).

He stated that it was not at his instance that the Elliott-Hatch Booktypewriter was placed or installed in the Post Office Department, but that this had been done under the direction of the First Assistant Postmaster General. In making allowances for the machines he acted under instructions from the First Assistant Postmaster General and so acted with reference to the purchase of the machines mentioned in the indictment. He denied emphatically the making of the alleged agreement with Towers and that on July 11th, 1901, he had received a draft from him for the purpose of influencing his official conduct with reference to the machines in question. He swore positively that on July 11th, 1901, there was no matter relating to the Elliott-Hatch Booktypewriter Company pending before him. He stated that he might have received a draft from Towers for three hundred and fifty dollars. That, if he did, it was in the nature of a loan (fol. 193). He denied the receipt of such draft pursuant to a corrupt agreement or for any wrongful purpose. He had known Towers for about seven years, and that Towers had cashed checks and bought drafts for him scores of times, and each time Beavers had reimbursed him (fol. 193).

This statement was made pursuant to Section 196 of the New York Code of Criminal Procedure, which provides :

"When the examination of the witnesses on the

part of the People is closed, the Magistrate must inform the defendant, that it is his right to make a statement in relation to the charge against him (stating to him the nature thereof); that the statement is designed to enable him, if he sees fit, to answer the charge and to explain the facts alleged against him; that he is at liberty to waive making a statement; and that his waiver cannot be used against him on the trial."

This statute is here applicable, under the established doctrine that proceedings under Section 1014 are in all respects similar to criminal proceedings instituted before a committing Magistrate in the State where the arrest is made, and are controlled and governed by the rules of evidence and procedure in such State (*Re Dana*, 68 Fed., 886, 893; *U. S.* vs. *Rundlett*, 2 Curt., 42; *U. S.* vs. *Case*, 8 Blatch., 251; *U. S.* vs. *Horton*, 2 Dill., 94; *U. S.* vs. *Brawner*, 7 Fed., 86, 90; *U. S.* vs. *Martin*, 17 Fed., 150, 156; *Re Burkhardt*, 33 Fed., 25, 26; *U. S.* vs. *Green*, 100 Fed., 941).

It may be conceded that this Court will not review questions relating merely to the sufficiency of evidence to sustain a finding of probable cause, and that if there was before the Commissioner competent legal evidence to sustain his finding, such finding will not be reviewed here (*Green* vs. *Henkel*, 183 U. S., 249; *U. S.* vs. *Lantry*, 30 Fed., 232; *U. S.* vs. *Green*, 108 Fed., 816; *Price* vs. *McCarthy*, 89 Fed., 84).

We raise no question of sufficiency. Although in a removal proceeding where no competent evidence was offered in rebuttal, this Court held that an indictment was *prima facie* evidence of the petitioner's guilt (*Beavers* vs. *Henkel*, 194 U. S., 73), it

is perfectly clear that an indictment is not legal evidence of guilt such as a Court or jury might hear. It is a mere charge or accusation drawn by a prosecuting officer. It is not evidence or proof in the ordinary acceptation of those terms in courts of justice. When, therefore, its averments are controverted by sworn proof, such as might be heard by a jury on a criminal trial, the case is not one presenting a question of sufficiency such as would arise from a conflict between testimony of equal competency and probative force.

To determine that an accusation which is controverted by six witnesses and by the sworn statement of the accused is still proof of probable cause, is in effect a decision that it is conclusive and incapable of rebuttal. That it was so regarded by the Commissioner is shown by his statement on the record (fol. 190): "I do not think that in an examination like this testimony should be gone into which may be competent testimony and necessary testimony upon the trial of the indictment."

The decision in *Beavers* vs. *Henkel* (194 U. S., 73), went no further than the earlier decisions of the lower courts, which have recognized an indictment *when standing alone and uncontroverted* as *prima facie* evidence of probable cause sufficient to sustain the finding of the Commissioner. Thus in *Alexander's Case* (1 Lowell, 530), Judge Lowell said: "Before the Commissioner it is only a piece of evidence, to be sure, and may be met and controlled, but when it stands by itself and uncontradicted, it seems to be enough according to our practice to authorize the warrant." In *U. S.* vs. *Pope* (24 U. S. Inter. Rev. Rec., 29), com-

menting on his own decision in Alexander's case, Judge Lowell said: "This was a very convenient decision for the United States and a sound one, but it rests rather on long usage than on any principle of law, because generally speaking an indictment is evidence of nothing but its own existence, unless there is some statute giving it greater effect. It is but secondary evidence after all, or rather a statement of the result of evidence, and the better practice is to give primary evidence of criminality."

In *U. S.* vs. *Green* (100 Fed., 941; 108 Fed., 816), it was held that an indictment is not conclusive evidence of the facts stated therein, and in *Green* vs. *Henkel* (183 U. S., 241) no doubt was suggested as to the correctness of these views. There competent legal evidence of probable cause, in addition to the indictment, was before the Commissioner, *and the question of the conclusiveness of the indictment was not before this Court.*

Nor was the conclusiveness of an indictment in removal proceedings considered in *Beavers* vs. *Henkel* (194 U. S., 73), for in that case this Court held that the accused had offered no competent evidence before the Commissioner tending to establish want of probable cause, and that under these circumstances the indictment was *prima facie* evidence. That an indictment is not and should not be regarded as conclusive in removal proceedings is abundantly established by authority (*U. S.* vs. *Green*, 100 Fed., 941; *In re Richter*, 100 Fed., 295; *In re Belknap*, 96 Fed., 614; *In re Wood*, 95 Fed., 288, *U. S.* vs. *Price*, 84 Fed.,

636; *In re Price*, 83 Fed., 830; aff'd, 89 Fed., 84; *In re Dana*, 68 Fed., 886; *U. S.* vs. *Fowkes*, 49 Fed., 50; *In re Wolf*, 27 Fed., 606; *Alexander's Case*, 1 Lowell, 530; *U. S.* vs. *Haskins*, 3 Sawy., 262; *U. S.* vs. *Pope*, 24 Inter. Rec., 29).

CONCLUSION.

IT IS THEREFORE SUBMITTED THAT THE ORDER APPEALED FROM SHOULD BE REVERSED AND THE APPELLANT DISCHARGED FROM CUSTODY UNDER THE WARRANT OF COMMITMENT BY WHICH HE IS NOW HELD TO AWAIT REMOVAL TO THE DISTRICT OF COLUMBIA.

BANKSON T. MORGAN,
WILLIAM M. SEABURY,
Of Counsel for Appellant.

WASHINGTON, February 20th, 1905.

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

GEORGE W. BEAVERS, APPELLANT,
v.
CHARLES J. HAUBERT, UNITED States marshal, etc.
No. 354.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

The appeal in this case involves precisely the same questions presented in No. 355, and the two cases may therefore be considered and heard as one case.

The only difference in the two cases is that the writs of habeas corpus and certiorari in this case were applied for and issued by the district court for the eastern district of New York at a later stage of identically the same proceeding before the commissioner under section 1014.

The circuit court having dismissed the writ of habeas corpus issued on June 17, 1904, the commissioner proceeded to hear the case, the Government relying upon a certified copy of the indictment and the proof of identity as sufficient to make out a prima facie case. The defendant, Beavers, thereupon called certain witnesses in his own behalf, whose

names appear indorsed upon the indictment, and thereupon claimed that the prima facie case made out by the Government had been rebutted and overthrown. The commissioner, however, decided that there was probable cause to believe that an offense had been committed by Beavers in the District of Columbia. Thereupon application was made to the district judge for an order of removal, and Judge Thomas granted the same, and the defendant, Beavers, was committed to the custody of the marshal for removal to Washington. But before said order of removal could be executed, writs of habeas corpus and certiorari were issued by the United States district court for the eastern district of New York on the 30th day of June, 1904. A hearing upon these writs was thereafter had, and on the 5th day of July, 1904, the writs were dismissed and the prisoner remanded to the custody of the marshal.

This appeal was taken from the decision of the United States district court for the eastern district of New York, dismissing said writs of habeas corpus and certiorari, and the questions of law presented are substantially as follows:

First. The jurisdiction of the commissioner to proceed with the hearing under section 1014 of the Revised Statutes, during the pendency of an indictment against Beavers in the United States district court for the eastern district of New York.

Second. Whether the prima facie case made out by the Government upon the hearing before the commissioner was rebutted and overthrown by the evidence produced by the defendant.

Third. Whether the district court had jurisdiction to make the order of removal and surrender its own jurisdiction over the prisoner in favor of the jurisdiction of the supreme court of the District of Columbia without first trying the defendant upon the Brooklyn indictment, or requiring that the district attorney enter a nolle prosequi as to such indictment.

This case is substantially the same as No. 355, and in order that a prompt trial may be had upon the merits before the supreme court of the District of Columbia, the Solicitor-General, on behalf of the United States, moves that it be advanced and suggests that the case be set down for hearing along with No. 355, some time in the latter part of January or early in February next.

Notice of this motion has been served upon counsel for appellant.

HENRY M. HOYT,
Solicitor-General.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

GEORGE W. BEAVERS, APPELLANT,
v.
CHARLES J. HAUBERT, UNITED STATES marshal, etc. } No. 355.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

MOTION TO ADVANCE.

The appellant, George W. Beavers, was indicted by the grand jury of the District of Columbia on the 5th day of October, 1903, for having violated section 5501 of the Revised Statutes. The indictment charges that while George W. Beavers was an officer of the United States, to wit, superintendent of the Division of Salaries and Allowances in the office of the First Assistant Postmaster-General, and while acting for and in behalf of the United States in such official capacity, he accepted and received a large sum of money with the intent and upon the understanding that his official action and decision with reference to certain matters pending before him as such Government official should be influenced thereby.

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A bench warrant having been issued by the supreme court of the District of Columbia for the arrest of said Beavers, and said warrant having been returned into said court with the marshal's indorsement thereon that said Beavers could not be found within said district, on June 3, 1904, said Beavers was arrested in the city of Brooklyn upon a warrant issued by B. Lincoln Benedict, a United States commissioner for the eastern district of New York. Said commissioner's warrant was issued under and pursuant to the provisions contained in section 1014 of the Revised Statutes, for the purpose of securing the appearance of the said George W. Beavers for trial in the supreme court of the District of Columbia upon said indictment. At the time of this arrest, Beavers was under bond to appear before the United States district court for the eastern district of New York to answer an indictment under section 1781 of the Revised Statutes. (*Beavers* v. *Henkel*, 194 U. S., 73.)

Upon being arraigned before United States Commissioner Benedict, objection was made on behalf of the accused that the commissioner was without jurisdiction to proceed with the hearing, for the reason that the defendant was then under indictment in the United States district court for the eastern district of New York, and was under bond to appear before that court, and that it was the duty of the Government to dispose of that case, either by trial or a *nolle prosequi*, before any proceedings could be instituted under section 1014 for the purpose of holding the accused for appearance be-

fore the supreme court of the District of Columbia. This objection was, however, overruled by the commissioner, who proceeded to hear the case without regard to the Brooklyn indictment, holding in effect that the pendency of an indictment in the United States court at Brooklyn could not operate to prevent the Government from instituting proceedings under section 1014 to hold the defendant for appearance in the District of Columbia; That before the defendant could be removed under such proceedings to Washington, it was necessary that an application be made to the district judge for an order of removal, at which time the court and the district attorney could decide whether jurisdiction of the defendant under the Brooklyn indictment would be waived and the prisoner sent to Washington, or whether he should be held for trial under the Brooklyn indictment and the application for the order of removal be denied.

On the 17th day of June, 1904, Beavers applied to the circuit court of the United States for the eastern district of New York for a writ of habeas corpus for the purpose of testing the jurisdiction of the commissioner to proceed with this hearing, and the writ was issued upon the same day. The case was thereafter duly heard upon said writ, and on the 29th day of June, 1904, the circuit court dismissed the petition and discharged the writ, and remanded Beavers to the custody of the marshal. This appeal is taken for the purpose of reviewing the decision of the circuit court in dismissing the writ.

This case is one of several prosecutions growing out

of the frauds in connection with the Post-Office Department, and is of general public interest.

In order that a prompt trial on the merits may be had, if possible, the Solicitor-General, on behalf of the United States, suggests that the case be set down for hearing late in January or in the early part of February next.

Notice of this motion has been served upon counsel for the appellant.

HENRY M. HOYT,
Solicitor-General.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

GEORGE W. BEAVERS, APPELLANT,
v.
CHARLES J. HAUBERT, UNITED STATES MARSHAL, etc. } No. 354.

BRIEF ON BEHALF OF APPELLEE.

THE QUESTION OF LAW.

The question of law involved in this case is whether the Government *has the power* to institute and maintain removal proceedings under section 1014 of the Revised Statutes, for the purpose of removing George W. Beavers from the city of Brooklyn, in the eastern district of New York, to the District of Columbia, while there is still pending and undisposed of in the circuit court for the eastern district of New York an indictment against the said George W. Beavers.

STATEMENT OF CASE.

This case comes before this court upon an appeal from an order of the United States district court for the eastern district of New York, made and entered on

the 5th day of July, 1904, dismissing writs of habeas corpus and certiorari theretofore issued out of said court upon the petition of George W. Beavers, the appellant herein. (Rec., p. 114.)

It will be necessary, in the course of the discussion of this case, to refer quite frequently to the several indictments which have been returned against George W. Beavers by the United States grand jury for the eastern district of New York and the United States grand jury for the District of Columbia. In the month of July, 1903, three indictments were found against Beavers in the United States circuit court for the eastern district of New York, charging him with having violated sections 1781 and 1782 of the Revised Statutes. These indictments will hereafter be referred to as the "Brooklyn indictments." In the months of September and October, 1903, several indictments were returned against George W. Beavers in the supreme court of the District of Columbia. In one of these indictments he is charged with having violated section 5501 of the Revised Statutes. These indictments will hereafter be referred to as the "Washington indictments."

In the spring of 1903 George W. Beavers left the city of Washington, where he had been employed for a number of years in the Post-Office Department as superintendent of the Division of Salaries and Allowances in the office of the First Assistant Postmaster-General, and went to New York. When the Brooklyn indictments were returned against Beavers it appears

that he was residing, temporarily at least, in the city of New York, and thereupon proceedings were instituted by the Government under section 1014 of the Revised Statutes for the purpose of securing his appearance in the city of Brooklyn for trial. These proceedings were instituted long before the finding of the Washington indictments, and in the course of several months' delay, during which time the case was taken by appeal to the Supreme Court of the United States (194 U. S., 73), Beavers was compelled to appear before the United States circuit court for the eastern district of New York to answer the indictments pending in that court against him.

After the finding of the Washington indictments in the fall of 1903, and while the proceedings were in progress looking to the removal of Beavers from the city of New York to Brooklyn for trial, the Government instituted another proceeding before United States Commissioner Hitchcock of the southern district of New York for the purpose of securing the appearance of Beavers for trial in the District of Columbia upon the Washington indictments. Judge Holt, upon habeas corpus proceedings being instituted in behalf of Beavers, held that the arrest of Beavers upon the second warrant issued by the commissioner upon the Washington indictment should be vacated, for the reason that there was then pending a proceeding before the commissioner having for its purpose the ultimate removal of Beavers to the city of Brooklyn for trial. (In re Beavers, 125 Fed. Rep., 988.) Thus it appears that the Government was prevented in the

fall of 1903 from maintaining proceedings under section 1014 of the Revised Statutes, for the purpose of securing the appearance of Beavers for trial upon the Washington indictments.

When Mr. Beavers appeared in Brooklyn in the month of June, 1904, and before he could be tried in that jurisdiction upon the Brooklyn indictments, the Government instituted these proceedings before Commissioner Benedict in the city of Brooklyn. with a view to securing the appearance of Mr. Beavers for trial before the supreme court of the District of Columbia. United States Commissioner Benedict issued his warrant in June, 1904, for the arrest of Mr. Beavers upon one of the Washington indictments, and thereupon a writ of habeas corpus was applied for upon the ground that such a proceeding could not be maintained against Beavers during the pendency of the Brooklyn indictments. The circuit court for the eastern district of New York refused to follow the ruling of Judge Holt and dismissed the writ, holding in effect that although an indictment was pending against Beavers in the eastern district of New York, proceedings could be instituted under section 1014 of the Revised Statutes by the United States, looking to the ultimate removal of the defendant to the District of Columbia for trial.

Upon the conclusion of these proceedings before United States Commissioner Benedict, and before an order of removal could be applied for or obtained from the district court, counsel for Beavers made an application to the United States district court for the eastern district of New York for writs of habeas corpus and

certiorari, alleging that the prisoner should be discharged from the custody of the marshal, for the following reasons: First, because the commissioner was without jurisdiction to entertain such proceedings while the indictments were pending against Beavers in the eastern district of New York; and, second, upon the ground that the prima facie case made out by the Government had been overthrown by evidence produced in behalf of the defendant. The court dismissed the writs of habeas corpus and certiorari and remanded the prisoner to the custody of the marshal, to be held under the commissioner's warrant to await an application to the district judge for an order of removal to the District of Columbia.

This writ of habeas corpus having been issued before the district attorney had an opportunity to apply to the district judge for an order of removal, the authority of the district judge to make such an order is not directly involved in the consideration of this case. The question as to whether the district judge has that power is, however, so intimately connected with this case as to render it not only proper, but very essential, that such question be determined upon this appeal. Otherwise we may have the spectacle presented of another appeal to this court in practically this selfsame proceeding in order that the question may be determined as to whether the district judge is authorized under the law to make an order of removal in this case. We therefore respectfully submit that it is eminently proper that this court should consider this case as though an application had been made and the district

court had issued its order for the removal of Beavers from Brooklyn to the District of Columbia for trial, in order to prevent further unnecessary delay.

Case No. 355 on the docket of this court for the present term is an appeal from an order of the United States circuit court for the eastern district of New York, dismissing a writ of habeas corpus arising out of these same proceedings before United States Commissioner Benedict. The writ of habeas corpus was applied for and issued at an earlier stage of the proceedings, and but one question of law is presented by the record in that case, viz., as to whether the commissioner had jurisdiction to entertain the proceedings under section 1014 of the Revised Statutes before the Brooklyn indictments had been finally disposed of.

THE GOVERNMENT'S CONTENTION.

The Government contends that United States Commissioner Benedict had jurisdiction to entertain these proceedings under section 1014 of the Revised Statutes, even though an indictment was then pending against George W. Beavers in the United States circuit court for the eastern district of New York; that the order of the commissioner holding Beavers for appearance before the supreme court of the District of Columbia, and in default of bail that he be committed to the custody of the United States marshal to await the order of removal, was a perfectly valid and proper order, and one which said commissioner had full power to make; and further,

that the United States district judge for the eastern district of New York has full power and jurisdiction to issue an order for the removal of George W. Beavers to the District of Columbia for trial, whenever an application for such removal shall be made to said judge by the United States district attorney for the eastern district of New York.

And the Government further contends that the evidence produced upon the hearing before the commissioner in behalf of George W. Beavers was totally insufficient to rebut or overthrow the prima facie case established by the Government by virtue of the certified copy of the indictment and proof of the identity of the defendant.

I.

THE FACT THAT AN INDICTMENT IS PENDING AGAINST GEORGE W. BEAVERS IN THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF NEW YORK IN NO MANNER AFFECTS THE POWER OR THE RIGHT OF THE UNITED STATES GOVERNMENT TO INSTITUTE AND MAINTAIN PROCEEDINGS AGAINST SAID BEAVERS, UNDER SECTION 1014 OF THE REVISED STATUTES, FOR THE PURPOSE OF SECURING HIS APPEARANCE FOR TRIAL BEFORE THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

After the finding of the Washington indictments in the months of September and October, 1903, the Government instituted proceedings before United States Commissioner Hitchcock for the southern district of New York, for the purpose of securing the appearance of George W. Beavers for trial in the District of Columbia. At that time it will be remembered a sim-

ilar proceeding was pending before the same commissioner upon the Brooklyn indictments. United States District Judge Holt, upon the petition of George W. Beavers, issued a writ of habeas corpus for the purpose of testing the legality of the proceedings before the commissioner upon the Washington indictments. Judge Holt held that the commissioner had authority to issue the warrant for the arrest of Beavers upon the Washington indictment, but that "it would be the duty of the marshal not to execute it, but to hold it pending the decision of the commissioner in the proceeding for the removal of the defendant to the eastern district of New York." (In re Beavers, 125 Fed. Rep., 988.) The learned judge announced that he relied upon the authority of *Taylor* v. *Taintor* (16 Wall., 271), and concluded that inasmuch as there was pending a proceeding for the removal of Beavers to the eastern district of New York, the arrest under the second warrant issued by the commissioner should be vacated.

The Government contended that it was entitled to maintain two proceedings under section 1014 of the Revised Statutes against George W. Beavers, for the purpose of holding him to appear for trial in both the city of Brooklyn and in the city of Washington. If, however, upon the termination of such proceedings before the commissioner, it should appear that there was probable cause to believe that the defendant had committed a crime against the laws of the United States in the eastern district of New York, and also another

crime against the laws of the United States in the District of Columbia, it would then be the duty of the commissioner to hold the accused to bail to appear at different times in the future before each of said courts. If for any reason the accused should fail to give bail for his appearance, then the question would arise upon an application to the district judge for an order of removal as to which jurisdiction should first be given the opportunity of trying the defendant for the offenses charged. And again, if the accused should give bail for his appearance in Brooklyn and refuse to give bail for his appearance in Washington, and the United States should elect to ask for his removal to Washington for trial, and the United States district judge should grant such application, his sureties on the Brooklyn indictments would certainly be exonerated, and especially so if, by reason of his removal to Washington, the defendant should be prevented from appearing before the circuit court for the eastern district of New York to answer the indictments pending against him in that court.

This decision of Judge Holt's, vacating the proceedings on the Washington indictment, although clearly erroneous, and based upon dicta from the case of *Taylor* v. *Taintor* (*supra*), having no application to the case at bar, has afforded counsel for the appellant the only authority to be found in the books in support of his contention that a defendant can not be surrendered to another jurisdiction until the court acquiring jurisdiction has wrought its function. A brief considera-

tion of a few points will, in our judgment, be sufficient to make clear the principles of law governing this case:

(a) *This case in no manner involves a conflict of jurisdiction.*

There are numerous cases holding that, where there is a conflict of jurisdiction, the court first obtaining jurisdiction of either the person or thing is entitled to exercise that jurisdiction without interference from any other court until it has wrought its function. As was said in *Taylor* v. *Taintor* (*supra*), and quoted by Judge Holt in his opinion in the Beavers case: "It is a principle of universal jurisprudence that where jurisdiction has attached to a person or thing, it is, unless there is some provision to the contrary, exclusive in effect until it has wrought its function." We have no fault to find with this proposition of law, and there is no question but that the United States attorney for the eastern district of New York and the United States circuit court for that district would have been perfectly justified had they asserted their right to try George W. Beavers upon the Brooklyn indictments before surrendering him to the authorities of the District of Columbia. But it must be remembered that it is the sovereignty of the United States which is here seeking to assert and vindicate itself, and if the United States Government has the power to elect as to which of these indictments against George W. Beavers shall be first tried, it certainly is entitled to maintain proceedings for the purpose of securing the appearance of the defendant in two separate judicial districts preliminary to such

trial. So far as this case is concerned the action of the Government with respect to these removal proceedings is simply tantamount to an election as to which of these two sets of indictments shall be moved first.

(b) Whether a removal proceeding from Brooklyn to Washington would operate to discharge the sureties upon the bond of George W. Beavers for his appearance at Brooklyn for trial is a question which need not here be considered.

It is only necessary to point out that the sureties are in no manner parties to this controversy. Should the Government, in seeking to remove George W. Beavers from Brooklyn to Washington for trial, do that which would operate to discharge the obligation of the sureties on Beavers's bond for his appearance before the circuit court for the eastern district of New York, it is a matter which alone concerns the Government. The defendant can suggest no legal objection to being removed to the District of Columbia for trial, and the fact that he has not been tried upon the Brooklyn indictments affords neither the defendant nor his sureties legal ground for complaint or opposition to these removal proceedings.

(c) Every sovereignty has the power to waive its right to try a person accused of having committed an offense against its laws, and may elect to surrender such accused person, without his consent, to a demandiny State.

Taylor v. *Taintor*, 16 Wall., 366.
In re Hess, 5 Kans. Apps., 763.
State v. *Allen*, 2 Humph. (Tenn.), 258.

This right is necessarily inherent in every State and was distinctly recognized by Mr. Justice Swayne in delivering the opinion of the court in *Taylor* v. *Taintor*, (*supra*), when he said:

> If the principal is arrested in the State where the obligation is given and sent out of the State by the governor, upon the requisition of the governor of another State, it is within the third. In such cases the governor acts in his official character and represents the sovereignty of the State in giving efficacy to the Constitution of the United States and the law of Congress. If he refuse, there is no means of compulsion. But if he act, and the fugitive is surrendered, the State whence he is removed can no longer require his appearance before her tribunals, and all obligations which she has taken to secure that result thereupon at once, *ipso facto*, lose their binding effect.

If, therefore, the governor of one State has the power to surrender to another State a person charged with the commission of a crime in the State from which he is demanded, it would seem to follow *a fortiori* that the United States Government has the right to remove George W. Beavers from the city of Brooklyn, in the State of New York, to the District of Columbia for trial, without first being compelled to dispose of the Brooklyn indictments now pending in that district against him. In the case of a governor surrendering to another State a person charged with a crime, his act is regarded as the act of the sovereign State and would operate to release the sureties who had under-

taken to produce their principal before a particular court of the asylum State upon a day certain to answer an indictment pending in such court. In the case of the removal of George W. Beavers from the city of Brooklyn to the city of Washington, the United States attorney for the eastern district of New York, acting under instructions from the Attorney-General of the United States, represents the United States Government in its sovereign capacity.

The act of the district attorney in applying for an order of removal and the act of the district judge of the United States in making such order are the acts of the United States Government, and as such are entitled to recognition as the final decision of the Government with respect to the case which it has decided should be first prosecuted. Should these removal proceedings operate to prevent George W. Beavers from appearing in Brooklyn on the day set for the trial of the Brooklyn indictments, his sureties upon the Brooklyn recognizance would certainly be exonerated. But however that may be, we feel perfectly confident that the defendant has no legal right to have the Brooklyn indictments finally disposed of before proceedings can be maintained under section 1014 of the Revised Statutes looking to his removal to the District of Columbia for trial.

II.

THE EVIDENCE PRODUCED UPON THE HEARING, IN BEHALF OF THE DEFENDANT, WAS TOTALLY INSUFFICIENT TO OVERTHROW THE PRIMA FACIE CASE ESTABLISHED BY THE GOVERNMENT.

Upon the hearing of this case before United States Commissioner Benedict, the Government introduced a certified copy of one of the Washington indictments, together with proof of the identity of the defendant, and thereupon rested its case.

The indictment charges that George W. Beavers, while an officer of the United States, to wit, superintendent of the Division of Salaries and Allowances, in the office of the First Assistant Postmaster-General, in pursuance of a corrupt and unlawful agreement, did receive unlawfully from one W. Scott Towers, an agent of the Elliott & Hatch Book Typewriter Company, a draft for $350, with the intent on the part of him, the said George W. Beavers, that his decision and action with reference to a matter then pending before him in his official capacity should be influenced thereby to the detriment of the United States. (Rec., pp. 9, 10.) At the close of the Government's case, counsel for the defendant, Beavers, called certain witnesses in his behalf (Rec., pp. 76, 104), each of whom testified to certain facts relating more or less to the matters alleged in the indictment. None of the testimony offered, however, tended to rebut the case made out by the Government upon the certified copy of the indictment and proof of identity. George W. Beavers was himself called as a witness in his own behalf, and the proceed-

ings had before the commissioner with reference to the taking of his testimony tended very strongly, we submit, to establish the charge set forth in the indictment, and must have had great influence upon the commissioner in convincing him of the truth of the charges contained in the indictment.

When the defendant was called as a witness, his counsel requested that everybody leave the room in which the hearing was being held, except the district attorney, the accused, and his counsel, which request the commissioner declined to entertain. (Rec., p. 104.) After answering certain preliminary questions, Mr. Beavers admitted that on or about the 11th day of July, 1901, he received from W. Scott Towers a draft for $350, being the amount of money Beavers is charged in the indictment with having received as a bribe from Towers. (Rec., p. 105.) Beavers, however, denied that he had received it for the purpose of influencing his official conduct with reference to a matter relating to the Elliott & Hatch Book Typewriter Company, then pending before him. The explanation given by Mr. Beavers, as he remembered it, was that he had received this money as a loan from Mr. Towers, and that owing to Mr. Towers's acquaintance with the banks in Washington, he (Towers) frequently obtained drafts for Beavers on New York and elsewhere, and sometimes had notes discounted for Beavers. (Rec., p. 105.) After having testified to these facts, the district attorney attempted to cross-examine Beavers with reference thereto, and thereupon his counsel objected

to any cross-examination, upon the ground that the defendant took the stand merely for the purpose of making a statement, and to explain the facts alleged against him, in accordance with the provisions of section 196 of the New York Code of Criminal Procedure. When the district attorney again attempted to cross-examine Beavers, his counsel instructed him to decline to answer any questions that might be put to him by the district attorney upon cross-examination.

Not only did it appear to the commissioner, but it will appear with convincing force to anyone reading this record, that the Post-Office Department was purchasing from the Elliott & Hatch Book Typewriter Company certain book-typewriter machines, called "book-typewriters," for the use of the Post-Office Department, at the price of $200 each; that W. Scott Towers was the agent of this company, and that George W. Beavers, as general superintendent of the Division of Salaries and Allowances, in the office of the First Assistant Postmaster-General of the United States, was the officer of the Government whose duty it was to contract for or purchase machines of this character; and finally, it appears beyond controversy that George W. Beavers, while occupying such official position in the Post-Office Department, received from said W. Scott Towers a draft for $350. The Government contends that this money was given by Towers to Beavers for the purpose of influencing his official conduct with reference to the purchase of these machines. Beavers went upon the witness stand in this proceeding and

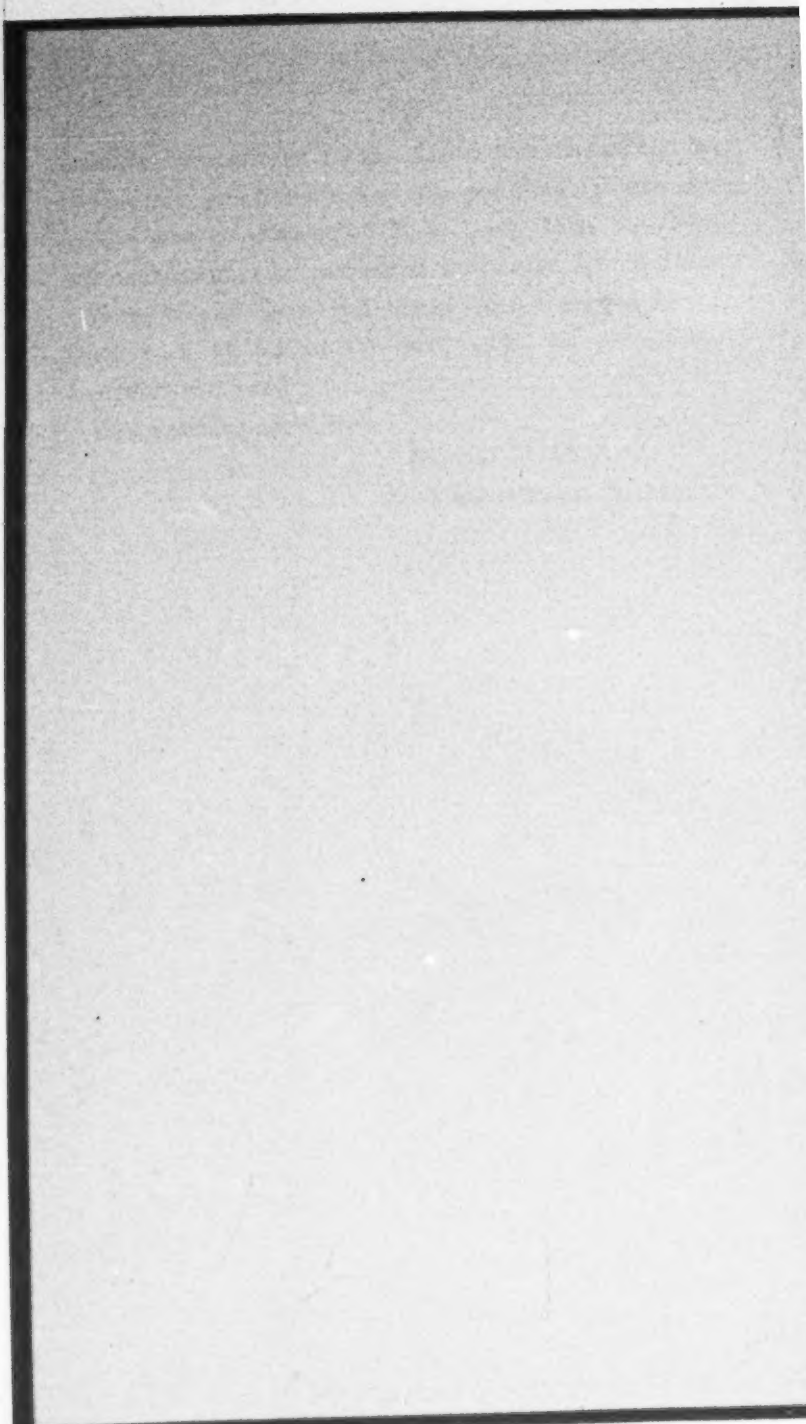
admitted that he received this money from Towers, but claimed that it was received, *as he remembered it, in the nature of a loan.* This was the only testimony produced by the defendant to rebut the case made out by the Government, and we submit that instead of rebutting the Government's case, it furnished additional proof of the charge set forth in the indictment that this money was received by Beavers from Towers for an unlawful purpose. The United States commissioner was certainly justified in finding from this evidence that a crime had been committed, as charged in the indictment, and that there was probable cause to believe that the defendant had committed the offense so charged.

In case this honorable court should be of the opinion that the record fails to show that the circuit court for the eastern district of New York *has waived jurisdiction* over the person of the defendant with respect to the indictments pending in said court, and that such *a waiver of jurisdiction is necessary as a condition precedent to the power of the Government to remove the accused* to the District of Columbia for trial, then, and in such case, we submit that the Government should be permitted *at this time* to dismiss the cases against the defendant in the circuit court for the eastern district of New York, *without prejudice* to the removal proceedings which are here under consideration. In other words, if this honorable court should be of the opinion that the accused *can not*

lawfully be removed to the District of Columbia for trial while indictments are still pending against him in the eastern district of New York, then the Government should be permitted *to dismiss the Brooklyn indictments* and have Beavers at once removed to the District of Columbia for trial, *under the proceedings heretofore instituted.*

Respectfully submitted.

MILTON D. PURDY,
Assistant Attorney-General.



Supreme Court of the United States.

Nos. 354 and 355.—October Term, 1904.

George W. Beavers, Appellant, 354 vs. Charles J. Haubert, United States Marshal, etc.	Appeal from the District Court of the United States for the Eastern District of New York.
George W. Beavers, Appellant, 355 vs. Charles J. Haubert, United States Marshal, etc.	Appeal from the Circuit Court of the United States for the Eastern District of New York.

[April 17, 1905.]

These cases were submitted together. No. 354 is an appeal from an order and judgment of the District Court of the Eastern District of New York, in *habeas corpus*, remanding to the custody of appellee. No. 355 is an appeal from an order of the United States Circuit Court for the same district, dismissing a writ of *habeas corpus* arising out of the same proceedings as No. 354. The same questions of law are presented and we need not further distinguish the cases.

The arrest, from which appellant prayed to be discharged, was made upon a commitment and warrant in proceedings to remove him to the District of Columbia, to be tried upon an indictment there found against him. He attacks the commitment and warrant as not being due process of law, in that the commissioner who issued them had no jurisdiction to entertain proceedings against him, or to require bail, or in default thereof to commit him to await the order of the District Judge, because indictments were pending against him in the Circuit Court of the United States for the Eastern District of New York. The contention is that while the indictments were so pending he could not be removed to another jurisdiction.

The facts are as follows: On the 16th of July, 1903, two indictments were found against appellant in the Eastern District of New York, charging him with violations of sections 1781 and 1782 of the Revised Statutes of the United States, and on the 25th of July, 1903, another indictment was found against him in the same district for the violation of section 1781.

On the 3d of September, 1903, a bench warrant was issued on the indictments and proceedings instituted against him on the indictment of July 25, 1903. A warrant of removal was issued by the District Judge of the Southern District of New York, and subsequently an order was en-

tered by the Circuit Court, directing appellant to surrender himself to the United States marshal for said district, and in pursuance thereof the appellant did so, and entered into a recognizance before one of the District Judges for said district in the penal sum of $10,000 for his appearance in the Circuit Court for the Eastern District at the next regular term.

On the first of June, 1904, he appeared in said court in pursuance of the notice from the United States District Attorney, for the purpose of pleading to the indictments. On the seventh of June, a continuance having been granted, he moved to quash the indictment on affidavits and other papers properly served on the District Attorney. On the 8th he appeared before the Circuit Court, "prepared to move upon and plead to the said indictments." Thereupon the District Attorney refused to proceed further with the indictments, but stated his intention to institute proceedings for the removal of appellant to the District of Columbia, under the indictments found against him there. The court thereupon continued the proceedings until the 13th of June, 1904, from time to time thereafter, until the date of the petition herein, and enlarged him from day to day upon his recognizance, which is still in full force. On the 8th of June, 1904, he was arrested upon the warrant now in question. The indictments have not been quashed or nolle prossed, and the appellant is ready to plead thereto if the motions submitted in respect thereto be overruled.

The petitioner alleges that the only evidence adduced by the Government was a certified copy of the indictment, which, it is alleged, constituted no proof, but was incompetent and inadmissible because it failed to state facts sufficient to constitute a crime, and because it appeared from the testimony of the witnesses on whose testimony it was found and who were called before the commissioner that there was no probable cause to believe he was guilty of any offence against the United States, and whatever the strength the indictment possessed was rebutted by such evidence.

Mr. Justice McKenna, after stating the facts as above, delivered the opinion of the Court.

It will be observed that indictments were found against appellant in the Eastern District of New York. He was then living in the city of New York, which is in the Southern District. He was removed from the latter by removal proceedings to the former for trial, and, having been called upon to plead to the indictments, he made certain motions in respect thereto. The District Attorney, however, announced an intention not to proceed further with the prosecution, and announced further that he intended to prosecute proceedings to remove appellant to the District of Columbia for trial. This was done, and with the consent of the court. It is stated in Judge Thomas's opinion that the Circuit Court "deferred the hearing of the motions pending the hearing before the commissioner, for the purpose

of allowing the warrant to be served upon the defendant (petitioner,) and to permit the proceedings to continue before the commissioner."

The appellant contends, nevertheless, that the commissioner had no power to issue warrants, and relies on two propositions:

(1) The proceedings were void because they were an unlawful interference with the jurisdiction of the Circuit Court for the Eastern District of New York, in the custody of which he was.

(2) The proceedings were a violation of appellant's constitutional rights to a speedy trial by jury upon such indictments.

(1) In support of the first proposition is urged the principle "that where jurisdiction has attached to a person or thing, it is—unless there is some provision to the contrary—exclusive in effect until it has wrought its function." (*Taylor* v. *Taintor*, 16 Wall. 366, 370.) But this is primarily the right of the court or sovereignty, and has its most striking examples in cases of extradition. The cited case shows that whatever right a party may have is not a constitutional right. The question in the case was the effect on the bail of a defendant given to a State by the action of its governor, sending him out of the State under extradition proceedings. It was held that his bail was exonerated. The court said: "It is the settled law of this class of cases that the bail will be exonerated where the performance of the condition is rendered impossible by the act of God, the act of the obligee, or the act of the law." And the act of the governor of a State yielding to the requisition of the governor of another State was decided to be the act of the law. It was further said: "In such cases the governor acts in his official character, and represents the sovereignty of the State in giving efficacy to the Constitution of the United States and the law of Congress. If he refuse there is no means of compulsion, but if he act, and the fugitive is surrendered, the State whence he is removed can no longer require his appearance before her tribunals, and all obligations which she has taken to secure that result thereupon at once, *ipso facto*, lose their binding effect."

This case establishes that the sovereignty where jurisdiction first attaches may yield it, and that the implied custody of a defendant by his sureties cannot prevent. They may, however, claim exemption from further liability to produce him.

There is nothing in *In re Johnson*, (167 U.S. 120,) which militates against this view. Indeed, that it is the right of the court or sovereignty to insist upon or waive its jurisdiction is there decided. (page 126.) In *Cosgrove* v. *Henney*, Cosgrove was brought into this country from Canada under a treaty which confined action against him to the very offence for which he was surrendered until he should have an opportunity of returning. His subsequent arrest for a non-extraditable offence was held to be a violation of the pro-

cess under which he was brought into the United States, and therefore illegal.

The Circuit Court, as we have seen in the case at bar, consented to the removal of the appellant, and we are not called upon to decide whether the Government had the right of election, without such consent, to proceed in New York or the District of Columbia.

(2.) Undoubtedly a defendant is entitled to a speedy trial and by a jury of the district where it is alleged the offence was committed. This is the injunction of the Constitution, but suppose he is charged with more than one crime, to which does the right attach? He may be guilty of none of them, he may be guilty of all. He cannot be tried for all at the same time, and his rights must be considered with regard to the practical administration of justice. To what offence does the right of the defendant attach? To that which was first charged, or to that which was first committed? Or may the degree of the crimes be considered? Appellant seems to contend that the right attaches and becomes fixed to the first accusation, and whatever be the demands of public justice they must wait. We do not think the right is so unqualified and absolute. If it is of that character it determines the order of trial of indictments in the same court. Counsel would not so contend at the oral argument, but such manifestly is the consequence. It must be remembered that the right is a constitutional one, and if it has any application to the order of trials of different indictments it must relate to the time of trial, not to the place of trial. The place of trial depends upon other considerations. It must be in the district where the crime was committed. There is no other injunction or condition, and it cannot be complicated by rights having no connection with it. The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice. It cannot be claimed for one offence and prevent arrest for other offences; and removal proceedings are but process for arrest—means of bringing a defendant to trial. And this leads to the other contentions of appellant.

Upon the hearing before the commissioner the Government introduced in evidence a copy of the indictment and proof of the identity of appellant. The latter called witnesses and made a statement in his own behalf, and contends that he rebutted every material allegation of the indictment, and that the finding of the commissioner gave to the indictment the effect of conclusive proof.

Two questions are involved, whether appellant may rebut the indictment and whether he has done so. If the latter be answered in the negative, and we think it must be, no reply need be given to the other.

There is no question made of the sufficiency of the indictment. It certainly charges a crime. It charges that Beavers was Superintendent of

the Division of Salaries and Allowances in the office of the First Assistant Postmaster General, and that he entered into a corrupt agreement with W. Scott Towers, an agent of the Elliott & Hatch Book Typewriter Company, whereby Towers promised to pay to Beavers the sum of twenty-five dollars out of each two hundred dollars paid to said company for book typewriters, and that Beavers received from Towers, in pursuance of the agreement, a draft for the sum of three hundred and fifty dollars. The agreement was made and the draft given for the purpose of influencing Beavers' official judgment and action. The only testimony that is material to notice was delivered by Henry J. Gensler, Charles Flint, Howard W. Jacobs and E. H. Schley.

Gensler testified that up to June, 1900, he was an agent of the Elliott & Hatch Book Typewriter Company, and as such had charge of all the trade in the locality of the District of Columbia. After that time his son had such charge. It may be inferred that he had some knowledge of his son's business and was familiar with sales made during the year 1900. He testified that he had no knowledge of any agreement with Towers and Beavers in October, 1900, relating to Beavers' official conduct with regard to the Elliott & Hatch Book Typewriter Company.

Flint was the assistant treasurer and the assistant secretary of the company from February, 1901, to March, 1903. He testified that during the year 1901 the corporation, so far as the books and accounts showed, paid no money to Beavers for any purpose whatever, and that he had no knowledge that would lead him to believe that such money was paid. He further testified that if any money of the corporation had been paid for the purpose of securing the contract of the Government it would necessarily have come under his notice. Also that he had no knowledge of money being paid by Towers to Beavers, nor had he knowledge of money having been authorized by the corporation to be paid, either directly or indirectly, to Beavers either three hundred and fifty dollars, or any sum, on July 11, 1901, or any other time, and if such payment had been authorized he would have known it. He further testified that the sales to the Post Office Department were to Mr. Gensler, and the method adopted was that the machines were charged to Gensler as being outright purchases by him at one hundred and forty dollars each. The machines returned were credited to his account. A few sales were charged directly against the Postmaster General, with the understanding that they were to be paid for at two hundred dollars and charged to Gensler at one hundred and forty dollars. He also testified that while he was assistant treasurer he had no knowledge of the payment of money to Gensler or of authority given Gensler to pay money to Towers for Beavers, for the purpose of influencing Beavers' official action in regard to the sale of the Elliott & Hatch Book Typewriter, or that Beavers ever received anything of value from the company for such pur-

pose; and that if such payment had been made he believed he would have known it.

Howard W. Jacobs was bookkeeper and cashier of the corporation; Schley became secretary and treasurer in 1899. Both these witnesses testified as to knowledge of the affairs of the corporation, the trades made by it, and sales in Washington of machines and the business and knowledge of the payment by the corporation or any of its officers or agents to Beavers, or to Towers for Beavers substantially as Flint. The witnesses also testified that the Elliott & Hatch machines were the best of the book typewriters and their usual price was $200.

Beavers was sworn for the purpose, as expressed by his counsel, "of permitting the accused to make a statement in his own behalf." In answer to questions of his counsel he testified that he was the person accused and the person against whom three indictmedts had been found in the Eastern District of New York, charged with violations of sections 1781 and 1782 of the Revised Statutes of the United States. That it was not at his instance the Elliott and Hatch typewriter was placed in the Post Office Department; it was placed there under the direction of the First Assistant Postmaster General. It was the rule of the Department in making the allowance for the typewriter to act under the instructions of that officer, and he so acted. Under a like rule he acted in the purchase of the machines, and he further testified that he entered into no agreement with Towers whereby he was to receive $25 for each typewriter thereafter purchased by the Post Office Department. He admitted he received a draft from Towers, but it was in the nature of a loan, as he remembered it; also that he received many drafts from Towers, who was a man of considerable influence with the banks of Washington, and frequently obtained drafts for him (Beavers) and had notes discounted for him. This practice ran through their entire acquaintance. There was not, he further testified, on or about July 11, 1901, any matter relating to the Elliott & Hatch Book Typewriter pending before him.

Counsel for Government attempted to cross-examine Beavers, to which the latter's counsel objected. The commissioner ruled against the objection, and counsel directed Beavers not to answer. The objection to cross-examination was based upon the ground that Beavers took the stand merely for the purpose of making a statement in answer to the charge made against him and to explain the facts alleged, in accordance with section 196 of the New York Code of Criminal Procedure, and, it was urged, that that section, or any other section which governed the proceedings, did not contemplate cross-examination. And counsel further observed that as the indictment, which was the basis of the proceedings, was not the only one found against Beavers "for that reason it would be extremely unwise to allow him to enter into any rambling cross-examination."

The commissioner committed the appellant in default of bail, finding that there was probably cause that the offences charged had been committed. The finding was affirmed by the District Court in the proceedings for *habeas corpus*.

We think the finding was justified, in other words, the proof afforded by the indictment was not overcome, and this is all that it is necessary to now decide. Regarding the letter of the testimony when weighed with the indictment, it does not remove all reasonable grounds of presumption of the commission of the offence. The degree of proof is not that necessary upon the trial of the offence, and a certain latitude of judgment must be allowed the commissioner. We cannot say that such latitude was exceeded. The testimony was negative and, for the most part, confined to general statements, and Beavers resisted cross-examination and the test of the circumstances which might thereby have been elicited. But granting that he could under the New York Code offer himself to be sworn and deliver a statement under the directions of questions by counsel and be exempt from cross-examination, nevertheless the deficiences of his statement may be urged against him. It cannot be said, therefore, that the commissioner's finding of probable cause was not justified.

The contention that the District of Columbia is not a district of the United States within the meaning of section 1014 of the Revised Statutes, authorizing the removal of accused persons from one district to another, is disposed of by *Benson* v. *Henkel*, page .

The orders of the Circuit Court and the District Court dismissing the writs of *habeas corpus* are

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.